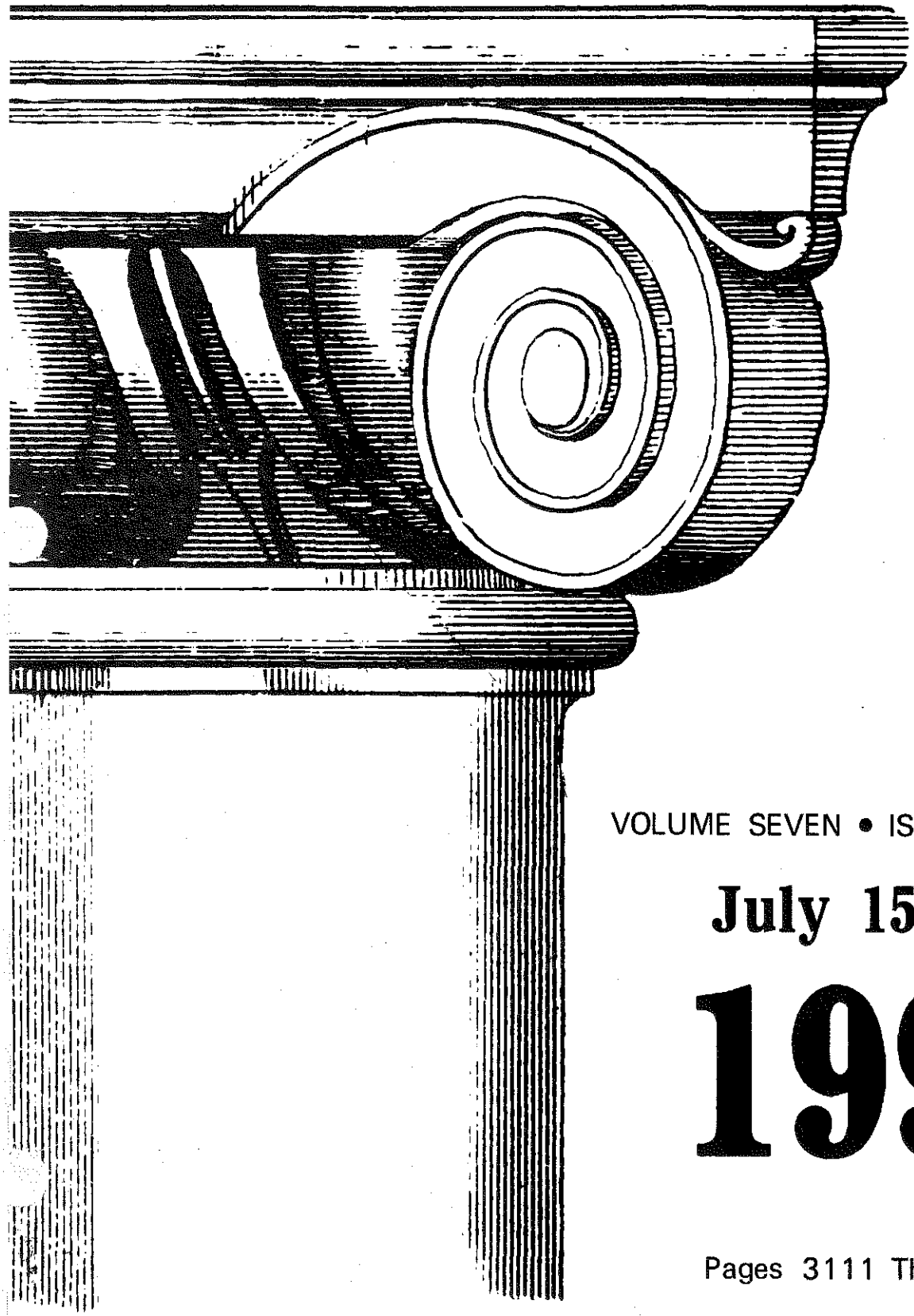
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME SEVEN • ISSUE TWENTY-ONE

July 15, 1991

1991

Pages 3111 Through 3332

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.

"The Virginia Register of Regulations" (USPS-001831) is published bi-weekly, except four times in January, April, July and October for $100 per year by the Virginia Code Commission, General Assembly Building, Capitol Square, Richmond, Virginia 23219. Telephone (804) 786-3591. Second-Class Postage Rates Paid at Richmond, Virginia. **POSTMASTER:** Send address changes to the Virginia Register of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

The Virginia Register of Regulations is published pursuant to Article 7 of Chapter 1.1:1 (§ 9-6.14:2 et seq.) of the Code of Virginia. Individual copies are available for $4 each from the Registrar of Regulations.

VIRGINIA REGISTER OF REGULATIONS

PUBLICATION DEADLINES AND SCHEDULES

July 1991 though September 1992

MATERIAL SUBMITTED BY Noon Wednesday	PUBLICATION DATE
June 26	July 15
July 10	July 29
July 24	Aug. 12
Aug. 8	Aug. 26
Aug. 21	Sept. 9
Sept. 4	Sept. 23
Final Index - Volume 7	

Volume 8 - 1991-92

Sept. 18	Oct. 7
Oct. 2	Oct. 21
Oct. 16	Nov. 4
Oct. 30	Nov. 18
Nov. 13	Dec. 2
Nov. 27	Dec. 16
Dec. 11	Dec. 30
Index 1 - Volume 8	

Dec. 24 (Tuesday)	Jan. 13, 1992
Jan. 8	Jan. 27
Jan. 22	Feb. 10
Feb. 5	Feb. 24
Feb. 19	Mar. 9
Mar. 4	Mar. 23
Index 2 - Volume 8	

Mar. 18	Apr. 6
Apr. 1	Apr. 20
Apr. 15	May 4
Apr. 29	May 18
May 13	June 1
May 27	June 15
Index 3 - Volume 8	

June 10	June 29
June 24	July 13
July 8	July 27
July 22	Aug. 10
Aug. 6	Aug. 24
Aug. 19	Sept. 7
Sept. 2	Sept. 21
Final Index - Volume 8	

TABLE OF CONTENTS

PROPOSED REGULATIONS

CRIMINAL JUSTICE SERVICES BOARD

COUNCIL ON THE ENVIRONMENT

DEPARTMENT OF HEALTH

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

BOARD OF MEDICINE

DEPARTMENT OF MINES, MINERALS AND ENERGY

REAL ESTATE APPRAISER BOARD

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

FINAL REGULATIONS

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

VIRGINIA RACING COMMISSION

EMERGENCY REGULATIONS

COUNCIL ON THE ENVIRONMENT

DEPARTMENT OF HEALTH (STATE BOARD OF)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

STATE CORPORATION COMMISSION

STATE LOTTERY DEPARTMENT

MARINE RESOURCES COMMISSION

GOVERNOR

GENERAL NOTICES/ERRATA

Table of Contents

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.

CRIMINAL JUSTICE SERVICES BOARD

Title of Regulation: **VR 240-03-1. Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel.**

Statutory Authority: § 9-182 of the Code of Virginia.

Public Hearing Date: October 2, 1991 - 9 a.m.
(See Calendar of Events section for additional information)

Summary:

Amendments to this regulation are proposed pursuant to the regulation issuing authority granted to the Criminal Justice Services Board by § 9-182 of the Code of Virginia.

The proposed amendments create and designate the position of "compliance agent" as a category of private security services business personnel. Additionally, the proposed amendments mandate six hours of compulsory minimum training for compliance agents.

In addition, the proposed amendments set forth compulsory in-service training standards for private security services business personnel and clarify the issuance and application of exemptions of training.

The proposed amendments set forth qualification standards for school directors and clarify the instructor certification process. In addition, the proposed amendments prescribe a firearm course for semi-automatic pistols.

The effective date of the regulation shall be January 1, 1992.

VR 240-03-1. Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel.

PART I.
GENERAL.

Pursuant to the provisions of § 9-182 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates the following rules for compulsory minimum training standards for private security services business personnel.

§ 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 training school" means a training school which provides instruction of at least the minimum training standards mandated and approved by the department for the specific purpose of training private security services business personnel.

"Board" means the Criminal Justice Services Board.

"Class" means a minimum of 50 minutes of instruction on a particular subject.

"Compliance agent" means a natural person who is an owner of or employed by a licensed private security services business. The compliance agent shall ensure the compliance of the private security services business with all applicable requirements.

"Department" means the Department of Criminal Justice Services.

"Director" means the chief administrative officer of the department.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, guards, private detectives/private investigators, couriers or guard dog handlers, to another person under contract, expressed or implied.

"Private security services business personnel" means any employee of a private security services business who is employed as an unarmed guard, armed guard/courier, armored car personnel, guard dog handler or private detective/private investigator.

"School director" means the chief administrative officer of an approved training school.

"Session" means a group of classes comprising the total hours of mandated training in a category (unarmed guards, armed guards/couriers, armored car personnel, guard dog handlers, private detectives/private investigators *and compliance agents*). Sessions are approved on the basis of schedules submitted by approved training schools in accordance with rules established herein.

PART II.
COMPULSORY MINIMUM TRAINING STANDARDS

FOR PRIVATE SECURITY SERVICES BUSINESS PERSONNEL.

§ 2.1. *Compulsory minimum training standards for private security services business personnel.*

A. Guards */Couriers* .

Core Subjects	Hours
1. Administration and security orientation	2
2. Legal authority	6
3. Emergency and defensive procedures	8
4. Written Examination (refer to § ~~4.1~~ ~~K~~ *5.1 L*)	
Total Hours (excluding written examination)	16

§ ~~2.2.~~ *B.* Guard dog handlers.

Core Subjects	Hours
1. Guard training (See § 2.1 *A*)	16
2. Basic obedience retraining	6
3. Canine patrol techniques	6
4. Written examination (refer to § ~~4.1~~ ~~K~~ *5.1 L*)	
Total Hours	28

§ ~~2.3.~~ *C.* Private detectives/private investigators.

1. Private detectives/private investigators orientation	8
2. General investigative techniques	20
3. Interviewing techniques	8
4. Criminal law and procedure and rules of evidence	8
5. Civil law and procedure and rules of evidence	10
~~6. [Repealed]~~	
~~7.~~ 6. Collecting and reporting information	6
~~8.~~ 7. Written comprehensive examination.	1
Total Hours	61

D. Compliance agent.

1. Review of Department of Commerce Rules	*2*
2. Review of Department of Criminal Justice Services Rules	*2*
3. Employment Law	*1*
*4. Record Maintenance/Requirements**	*1*
Total Hours	*6*

§ ~~2.4.~~ *E.* Firearms training (required for all armored car personnel and other armed private security services business personnel).

1. Classroom - 8 hours (refer to § ~~5.1~~ ~~A~~ *6.1 B* .)

2. Shotgun Classroom (if applicable) - 1 hour (refer to § ~~5.1~~ ~~B~~ *6.1 C* .)

3. Firearms Written Examination (refer to § ~~4.1~~ ~~K~~ *5.1 L 1 c and 5.1 L 1 d*)

4. Range - No minimum hours required. Each person who carries or has immediate access to a firearm in the performance of duty shall satisfactorily complete the prescribed firearms course with the type and caliber or type and gauge of weapon that is immediately accessible or carried in the performance of duty. (Refer to §§ ~~5.1~~ ~~A~~ ~~and~~ ~~5.1~~ ~~B~~ *6.1 B and 6.1 C* .)

Total Hours (excluding written examinations, shotgun classroom and all firearms range training). – 8

PART III.
COMPULSORY IN-SERVICE TRAINING STANDARDS FOR PRIVATE SECURITY SERVICES BUSINESS PERSONNEL.

§ 3.1. Compulsory in-service training standards for private security services business personnel.

A. Guards/Couriers.	*Hours*
1. Legal Authority	*2*
2. Job Related Training	*2*
Total	*4*

B. Guard Dog Handlers.	
1. Legal Authority	*2*
2. Job Related Training	*2*
3. Basic Obedience Retraining	*2*
4. Canine Patrol Techniques	*2*
Total	*8*

C. Private Detective/ Private Investigators.	*Hours*
1. Legal Authority/Issues (Civil & Criminal)	*4*
2. Job Related Training	*4*
Total	*8*

D. Compliance Agent.

1. Review of Department of

	Commerce Rules	*2*
2.	*Review of Department of Criminal Justice Services Rules*	*2*
	Total	*4*

PART ~~III~~ *IV*.
APPLICABILITY.

§ ~~3.1.~~ *4.1.* Applicability.

A. Every person employed by a private security services business *or applying to the Department of Commerce for registration* as a guard, courier, armored car personnel, guard dog handler, private detective/private investigator as defined by § 54.1-1900 of the Code of Virginia *, or for approval as a compliance agent as required by § 54.1-1902 A of the Code of Virginia,* who has not met the compulsory minimum training standards prior to the effective date of these regulations, must meet the compulsory minimum training standards herein established unless provided otherwise in accordance with § ~~3.1 B~~ or § ~~3.1 C~~ *subsections B and C of this section . Persons who fail to renew or reinstate registration with the Department of Commerce within six months after the expiration date of such registration but applies for registration as a private security services business personnel before 12 months after expiration of such registration must attend in-service training. Persons who fail to apply for registration within 12 months after the expiration date of their former registration with the Department of Commerce must comply with compulsory minimum training standard for the category(s) in which they were previously registered.*

B. Persons who meet the statutory requirements as set forth in § 9-182 of the Code of Virginia, *and who have completed a law-enforcement entry level training course,* may apply for an exemption from the mandatory training. The director may issue such exemption or partial exemption on the basis of individual qualifications as supported by required documentation. The director shall not issue more than a partial exemption to those persons who have remained out of law-enforcement employment in excess of 24 months. Those applying for and receiving exemptions must also comply with all firearms requirements, where applicable, and all regulations promulgated by the Department of Commerce. *Exemptions issued must be presented to the Department of Commerce for action within 12 months from date of issuance. The department may establish a fee for receiving and processing requests for exemptions.*

1. Persons receiving exemptions for the categories of ~~armed~~ guard and guard dog handler must attend the six-hour class entitled legal authority *and the two-hour class entitled administration and security orientation .*

2. Persons receiving exemption for the category of private detective/private investigator must attend the 10-hour class entitled civil law and procedures and rules of evidence *and the eight-hour class entitled private detective/private investigator orientation .*

C. The director may authorize credit for *firearms* training received at a department approved school which meets or exceeds the compulsory minimum training standards required for private security services business personnel provided that such training has been successfully completed within 12 months of the date of application.

D. Every person registered with the Department of Commerce as a guard/courier, armored car personnel, guard dog handler, private detective/private investigator or approved by the Department of Commerce to act as a compliance agent shall complete the compulsory in-service training standard once during each 24-month period of registration or approval as determined by the Department of Commerce.

PART ~~IV~~ *V*.
APPROVED TRAINING SCHOOLS OPERATIONS.

§ ~~4.1.~~ *5.1.* Approved training schools operations.

A. Private security services business personnel training schools must be approved annually by the department ~~prior to the first scheduled session~~ . Approval is requested by ~~making~~ *submitting a renewal* application to the director on forms provided by the department. *Renewal applications must be postmarked no later than January of each calendar year.* The director, in accordance with § 9-6.14:11 of the Administrative Process Act, may approve those schools which on the basis of curricula, instructors and facilities provide training that meets the compulsory minimum training standards. ~~Renewal applications shall be submitted by no later than February 1st of each calendar year.~~ A disapproval may be appealed to the board in accordance with § 9-6.14:11 of the Administrative Process Act. *The department may establish fees for the submission of initial applications, renewal applications and requests for training session approval.*

1. A school director must have successfully completed those segments of the mandated training they will seek approval to conduct before a new school application will be approved. School directors must be approved as private security instructors.

2. Instructors may not certify themselves as having met the mandated training standards for classes in which they provide instruction.

B. Approved training schools desiring to conduct firearms training classes only must request approval in accordance with § ~~4.1~~ *5.1* C.

C. Approved training schools must submit a proposed training schedule on a form provided by or approved by the department postmarked no less than 10 days prior to the beginning of each session. The training schedule must

include the date, time, subject, location and the name of the instructor for each class to be conducted during the training session. Any changes in an approved session shall be reported to the department immediately, followed by written notification postmarked the next working day. Approved training sessions will be conducted as scheduled.

D. Instruction shall be provided in no less than 50-minute classes.

E. Approved training may not exceed eight hours per day *(excluding testing)* .

F. In-service training schools shall be conducted in no less than four-hour sessions.

~~F.~~ *G.* Instructor qualifications.

1. Instructors teaching in an approved training school must be approved by the department. Instructor qualifications shall be based upon previous work experience, instructional experience, training, and education. As a minimum, instructors should meet the following requirements:

a. Have a minimum of three years supervisory experience with a private security services business or with any federal, U.S. military police, state, county or municipal law-enforcement agency, or

b. Have a minimum of one year experience as an instructor or teacher at an accredited educational institution or agency in the subject matter for which approval is requested or in a related field.

c. Must have completed an instructor development program ~~which~~ *within the three years immediately preceding the date of the application that* meets or exceeds standards established by the department.

d. Firearms instructors must have completed a firearms instructors school, specifically designed for law-enforcement or private security personnel. *The school must have been completed within the three years immediately preceding the date of the instructor application.*

~~G.~~ *H.* Approved training schools will be subject to inspection and review by the director or his staff. Out-of-state approved training schools which require inspection may be required to pay for actual expenses of inspection.

~~H.~~ *I.* Compliance agents are responsible for ensuring that unarmed guards comply with compulsory minimum training standards herein established for unarmed guards and training records of such personnel may be subject to inspection and review by the director or his staff.

~~I.~~ *J.* Mandated training conducted without prior approval from the department is null and void.

~~J.~~ *K.* The department may suspend or revoke the approval status of an approved training school upon written notification to the school's director. Such notification shall contain the reasons for revocation or suspension. The school's director may appeal the revocation or suspension by requesting a hearing before the board or its designee. The request shall be in writing and must be received at the department within 15 days of the date of the revocation or suspension notification.

~~K.~~ *L.* Written examinations.

A written comprehensive examination is required at the conclusion of training of the core subjects. When additional training in excess of the core subjects is necessary to meet the requirements set forth for armed guards/couriers, armored car personnel, or guard dog handlers, an additional examination will be administered specifically for that portion of training. Schools conducting training for private detectives/private investigators are required to administer a comprehensive examination at the conclusion of training.

1. All written examinations shall include at least three questions for each class of instruction in a particular area of mandatory training.

a. Each core subject shall be separately tested and graded. Individuals must attain a minimum score of 70% in each core subject. Any individual who fails to attain a minimum score of 70% in each core subject will be required to repeat the training in the core subject(s) in which the individual is deficient and attain a minimum score of 70% on the retest in order to satisfactorily complete this section of the training.

b. Mandated training in excess of the core subjects shall be tested and graded. A minimum score of 70% must be attained on the examination(s) covering those mandated subjects in excess of the core subjects. If an individual does not achieve a minimum score of 70% on the examination, the individual will be required to retake such training *during an approved training session* and must attain a minimum score of 70% on the retest in order to satisfactorily complete this section of the training.

c. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination. Any individual who fails to achieve a minimum score of 70% will be required to retake such training and must attain a minimum score of 70% on the retest in order to satisfactorily complete this section of the training.

d. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

e. Firearms range training will be graded on a satisfactory/unsatisfactory basis. All armed private security services business personnel must achieve a score of at least 70%.

PART ~~V~~ *VI*.
FIREARMS TRAINING.

§ ~~5.1.~~ *6.1.* Firearms course requirements.

A. Private security services business personnel who *desire to have their registration certified to authorize them to* carry or have a firearm available for immediate use in the performance of duty ~~will~~ *shall* be required to meet the provisions of § ~~5.1 A or~~ § ~~5.1 B, or both~~ *6.1 B and, if applicable, § 6.1 C no earlier than 60 days before applying to the Department of Commerce for certification and once during each 12-month period of certification as determined by the Department of Commerce*.

~~A.~~ *B.* Handgun.

1. Classroom training - *The eight hours of* classroom training will emphasize but not be limited to:

a. The proper care of the weapon,

b. Civil liability of use of firearms,

c. Criminal liability of use of firearms,

d. Deadly force,

e. Justifiable deadly force,

f. Range safety.

2. Range firing - (no minimum hours required) - The purpose of this course is to provide practical firearms training to individuals desiring to become armed private security services business personnel.

a. Prior to the date of range training it will be the responsibility of the school director to ensure that all students are informed of the proper attire and equipment to be worn for the firing range portion of the training.

~~b. Course - Virginia Modified Double Action Course~~

~~c.~~ *b.* Ammunition - 60 rounds - factory loaded Wadcutter or duty ammunition may be used for practice or range ~~qualifications, or both~~ *qualification. The caliber of the ammunition used shall be of the same caliber the student will carry on duty*.

~~d.~~ *c.* Target - Silhouette (full-size B21-B21x ~~or~~ , B-27 *or Q*) - Alternate targets may be utilized with prior approval by the director.

~~e.~~ *d.* With prior approval of the director, a reasonable modification of the firearms course may be approved to accommodate qualification on indoor ranges.

e. An approved firearms instructor must be on the range during all phases of firearms training. There shall be one firearms instructor or assistant per four shooters on the line.

f. Course. Virginia Modified Double Action course or the Virginia Modified Double Action course for Semi-Automatic Pistols.

~~3.~~ *(1)* Virginia Modified Double Action *Course*

Handgun

Virginia Modified Double Action Course for all handguns carried in the performance of duty.
Target - Silhouette (B21, B21x, B27 *or Q*)
60 rounds
Double action only
Minimum qualifying score - 70% ~~or~~ *which is* 42 rounds within Silhouette

Phase 1 - 7 yards, point shoulder position, 24 rounds
Load 6 rounds, fire 1 round on whistle (2 seconds), repeat
Load 6 rounds, fire 2 rounds on whistle (3 seconds), repeat
Load 6 rounds, fire 12 rounds on whistle (30 seconds), repeat

Phase 2 -15 yards, point shoulder position, 18 rounds
Load 6 rounds, fire 1 round on whistle (2 seconds), repeat
Load 6 rounds, fire 2 rounds on whistle (3 seconds), repeat
Load 6 rounds, fire 6 rounds on whistle (12 seconds)

Phase 3 - 25 yards, 90 seconds, 18 rounds
Load 6 rounds, on whistle:
fire 6 rounds, kneeling, strong hand; reload
fire 6 rounds, standing behind barricade, weak hand; reload, fire 6 rounds, standing behind barricade, strong hand (kneeling position may be fired using barricade)

4. An approved firearms instructor must be on the range during all phases of firearms range training. There shall be one firearms instructor or assistant per four shooters on the line.

(2) Virginia Modified Double Action Course for Semi-Automatic Pistols

Target - Silhouette (B-21, B-21X, B-27 or Q)
Minimum Qualifying Score - 70%

(a) Each officer is restricted to the number of magazines carried on duty. Magazines shall be loaded to their full capacity. The range instructor shall determine when magazines will be changed.

(b) Phase 1 - 7 yards, hip shooting, crouch position, load magazine, fire 1 round double action on command (2 seconds); or fire 2 rounds (3 seconds), make weapon safe, holster, repeat until 6 rounds have been fired.

On command, draw and fire 2 rounds (3 seconds), make weapon safe, holster, repeat until 6 rounds have been fired.

On command, draw and fire 12 rounds in 20 seconds, make weapon safe, and holster.

(c) Phase 2 - 15 yards point shoulder position. On command, draw and fire 1 round (2 seconds); or draw and fire 2 rounds (3 seconds), make weapon safe, holster, repeat until 6 rounds have been fired.

On command, draw and fire 1 round (2 seconds) or 2 rounds (3 seconds), make weapon safe, holster, repeat until 6 rounds have been fired.

On command, draw and fire 6 rounds (12 seconds), make weapon safe, holster.

(d) Phase 3 - 25 yards, kneeling and standing position. On command, assume kneeling position, draw weapon and fire 6 rounds, then fire 6 rounds weak hand, standing, barricade position, then fire 6 rounds strong hand, standing, barricade position, until a total of 18 rounds have been fired (70 seconds).

~~B.~~ *C.* Shotgun training.

1. Classroom training - classroom instruction will emphasized but not be limited to:

a. Safe and proper use and handling of shotgun,

b. Nomenclature,

2. Range firing (no minimum hours required) - The purpose of this course is to provide practical shotgun training to those individuals who carry or have immediate access to a shotgun in the performance of their duty.

3. Ammunition - 5 rounds - Ammunition must be of same type as carried in the performance of duty.

4. Course: Modified shotgun range

Distance	Position	No. Rounds	Target
25 Yds.	Standing/ Shoulder	5	Silhouette

5. An approved firearms instructor must be on the range during all phases of firearms range training. There shall be one firearms instructor or assistant per four shooters on the line.

~~C.~~ *D.* Firearms retraining.

1. All armed private security services business personnel must satisfactorily complete *two hours of* firearms classroom *training* and *the* range training as prescribed in ~~subsections A and B of § 5.1~~ *§§ 6.1 B and 6.1 C* , if applicable, within ~~every other~~ *each* calendar year ~~as set forth below~~ . Approved schools providing firearms retraining must meet the requirements of § ~~4.1~~ *5.1 A, B, C and D of these rules* .

2. All persons who are registered as armed private security services business personnel and who have complied with the basic firearms training requirement shall comply with this provision by December 31 of each calendar year after ~~receipt~~ *completion* of armed ~~registration~~ *guard training* and thereafter by December 31 of ~~every other~~ *each* calendar year.

3. Satisfactory completion of firearms retraining classes approved and monitored by the General Services Administration (GSA) will meet the requirements of this section.

PART ~~VI~~ *VII* .
ATTENDANCE AND ADMINISTRATIVE REQUIREMENTS.

§ ~~6.1.~~ *7.1.* Attendance and administrative requirements.

A. The compulsory minimum training standards *for entry level and in-service* shall be attained by attending and satisfactorily completing an approved training school.

B. Private security services business personnel enrolled in an approved training school are required to attend all prescribed mandatory training classes.

C. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to make up any training missed.

D. Each training school director will be required to maintain a current file of attendance records, examination scores, and firearms familiarization scores, on each individual for three years from the date of the training session in which the individual attendee was enrolled. *Additionally, each training director shall award a certificate of completion to each student who satisfactorily completes a training session. The certificate shall contain as a minimum, the following:*

The name of the approved school

Type of training session
Name of student
Date of completion of training session
Signature of training director

E. Any changes in an approved school schedule, instructors, dates, times and location shall be reported to the department immediately.

F. The school director of each approved training school shall ~~submit~~ *prepare* a certification of completion of training ~~form~~ *on forms provided by the Department of Commerce* which must be ~~postmarked~~ *transmitted* within seven days of the conclusion date of an approved training session *in compliance with the directions on the forms* , for each student who has satisfactorily completed all classes comprising an approved training session ~~with the exception of unarmed guards training sessions. The certification form will be prepared in triplicate; the originial is to be submitted to the Department of Commerce, one copy provided to the student and one~~ . *One copy* ~~to~~ *shall* be retained on file with the approved training school for three years. ~~The training certification forms will be provided by the Department of Commerce. Certification of satisfactory completion of unarmed guard training sessions shall be reported to the department on forms provided by or approved by the department. Such certification of satisfactory completion of unarmed guard training shall be submitted to the department within seven days of the ending date of each approved training session. A copy of the training certification shall be maintained by the approved training school for a minimum of three years.~~

G. The resumes and objectives as approved by the department shall be adhered to and all subject matter shall be presented in its entirety.

H. Failure to comply with rules and regulations.

All individuals attending an approved training school shall comply with the rules promulgated by the board and any other rules within the authority of the school director. The school director shall be responsible for enforcement of all rules established to govern the conduct of attendees. If the school director considers the violation of the rules detrimental to the welfare of the school, the school director may expel the individual from the school. Notification of such action shall immediately be reported to the employing agency and the director.

PART ~~VII~~ *VIII* .
~~EFFECTIVE DATE~~ *AUTHENTICATION* .

§ 7.1. Effective date.

These rules shall be effective January 1, ~~1990~~ *1992* , and until amended or rescinded.

A. Adopted.

March 17, 1977.

B. Amended.

October 4, 1989, and January 1, 1992.

COUNCIL ON THE ENVIRONMENT

Title of Regulation: **VR 305-01-001. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1, 10.1-1206 and 62.1-195.1. of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until September 13, 1991.
(See Calendar of Events section for additional information)

Summary:

The basic elements of council's proposed public participation guidelines include (i) maintaining a general information mailing list of persons interested in council's activities and a regulation mailing list for each regulatory proceeding; (ii) consulting with interested persons or forming standing or ad hoc committees as needed to obtain assistance in drafting regulations; (iii) allowing a minimum of 15 days of public comment after publication of a notice of intended regulatory action (NOIRA); (iv) council approving publication of draft regulations; (v) allowing at least 60 calendar days for public comment (NOPC) in the Virginia Register, a Richmond area newspaper, and by other means deemed appropriate; (vi) providing for public hearings, as deemed necessary, to receive comments on draft regulations; (vii) submitting the proposed regulation and supporting documentation to the Governor and the Department of Planning and Budget in conformance with the requirements of the Administrative Process Act and executive order concurrently with the distribution of the NOPC to the Registrar; and (viii) adopting final regulations in conformance with the Administrative Process Act and executive order.

VR 305-01-001. Public Participation Guidelines.

§ 1. Definitions.

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

"Administrative Process Act" means Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia.

"Administrator" means the Administrator of the Virginia Council on the Environment or his designee.

"Council" means the Council on the Environment established under § 10.1-1200 et seq. of the Code of Virginia.

"Executive order" means any directive issued pursuant to § 9-6.14:9.1 A of the Administrative Process Act.

"Member agencies" means those agencies designated as members of the council in § 10.1-1202 of the Code of Virginia.

"Person" means any corporation, association or partnership, one or more individuals, or any unit of government or agency thereof.

§ 2. Policy and application.

A. The procedures in § 3 of this regulation shall be used by the council for soliciting the comments of interested persons in the formulation, development and repeal of regulations and any revisions thereto as required by the Administrative Process Act. These procedures shall be used in the entire formulation, drafting, promulgation and final adoption process.

B. At the discretion of the council or the administrator, the procedures in § 3 may be supplemented by any means and in any manner necessary to gain additional public participation in the regulation adoption process or as necessary to meet federal requirements.

C. The failure of any person or organization to receive any notice or copies of any documents shall not affect the validity of any regulation otherwise adopted in accordance with the Administrative Process Act and executive order.

§ 3. Public participation procedures.

A. The administrator shall establish and maintain a general information list consisting of persons expressing an interest in the adoption, amendment or repeal of regulations by the council. The administrator shall also develop and maintain a regulation development mailing list for each regulatory proceeding. The list shall consist of persons who express an interest in any specific regulatory proceeding and other persons the administrator believes have an interest in the regulatory proceeding.

B. Whenever the council so directs or upon his own initiative, the administrator may begin the regulation adoption process according to these procedures and proceed to draft a regulatory proposal.

C. The council or the administrator may consult with any person and may form and use either standing or ad-hoc advisory groups to assist in the drafting and formulating a regulatory proposal.

D. The administrator may prepare and issue a notice of intended regulatory action (NOIRA) in accordance with the Administrative Process Act. A NOIRA shall include the notice of the opportunity to comment on issues to be addressed by a regulatory proposal, the time and date the public comment period will close, and the address where comments shall be directed. The public comment period shall remain open at least 15 calendar days after publication of the NOIRA in the Virginia Register. The administrator shall disseminate the NOIRA to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register of Regulations, and

2. Distribution to parties on the general information list established under subsection A of this section.

E. After consideration of public comment on the NOIRA, the administrator may prepare a draft regulation, a notice of public comment (NOPC), and supporting documentation required by the Administrative Process Act and executive order. The NOPC shall include the notice of the opportunity to comment on the proposed regulation, the time and date the public comment period will close, and the address where comments shall be directed.

F. Council shall approve the publication of draft regulations. Upon approving the release of a draft regulation for public review and comment, the administrator shall publish the NOPC in conformance with these guidelines. The public comment period shall remain open at least 60 days after publication of the NOPC in the Virginia Register of Regulations.

G. The administrator shall disseminate the NOPC to the public via the following:

1. Distribution to the Registrar of Regulations for publication in the Virginia Register and in a Richmond area newspaper,

2. Distribution to persons on the regulation development list established under subsection A of this section, and

3. Distribution by other means the administrator may deem appropriate.

H. Upon approval of a draft regulation, council or the administrator may schedule one or more informational hearings to receive comments on a proposed regulation. Hearings may be held at any time during the public comment period. Advance notice shall be provided to the general public with respect to the time, date and place of hearings.

I. Concurrently with distribution of the NOPC to the Registrar of Regulations, the agency shall submit the proposed regulation and supporting documentation to the Office of the Governor and the Department of Planning and Budget in accordance with the Administrative Process Act and executive order.

J. At the close of the public comment period, the remaining steps in the regulation adoption process shall be carried out in accordance with the Administrative Process Act and executive order.

§ 4. Applicability.

The public participation procedures described in this regulation apply only to the regulatory proceedings of the Council on the Environment. Comments on the regulatory proceedings of a council member agency must be submitted directly to that member agency in conformance with its public participation guidelines.

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Title of Regulation: **VR 305-02-01. Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia.**

Statutory Authority: § 62.1-195.1 of the Code of Virginia.

Public Hearing Dates:
September 4, 1991 - 7 p.m.
September 5, 1991 - 7 p.m.
(See Calendar of Events section for additional information)

Summary:

The basic information requirements of the oil and gas well drilling environmental impact assessment criteria and procedures set forth in this regulation include describing (i) the proposed oil or gas operation, (ii) the environmental and natural resource features potentially affected by an oil or gas operation, (iii) the probability and consequences of an oil or gas discharge to the environment, (iv) oil or gas release contingency plans, (v) the fiscal and economic impacts associated with the proposed operation, (vi) the potential secondary environmental impacts resulting from induced economic development, and (vii) general review and comment procedures.

VR 305-02-01. Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia.

PART I.
APPLICABILITY AND GENERAL REQUIREMENTS.

§ 1.1. Definitions.

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

"Access road" means a paved or unpaved route or path from a public highway or public road to a well site or associated facility.

"Administrator" means the Administrator of the Virginia Council on the Environment.

"Associated facilities" means any facility used for gas or oil operations in the Commonwealth, other than a well or well site.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III of "VR 173-02-01: Chesapeake Bay Preservation Area Designation and Management Regulations" and § 10.1-2109 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area consists of Resource Protection Areas and Resource Management Areas.

"Council" means the Virginia Council on the Environment as described in Chapter 12 (§ 10.1-1200 et seq.) of Title 10.1 of the Code of Virginia.

"Council member agencies" means those agencies designated as members of the council in § 10.1-1202 of the Code of Virginia.

"Cuttings" means fragments of rock produced in a well bore by a drill bit and brought to the surface by drilling fluids or air pressure.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Drilling fluid" means any fluid or drilling mud circulated in the well bore during drilling operations.

"Economic characteristics" means activities associated with the production, distribution and consumption of goods and services.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid into the productive strata, (ii) application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool.

"Environment" means the natural, scenic and historic attributes of Virginia.

"Environmental impact assessment" or "assessment" means that documentation which is required by § 62.1-195.1 of the Code of Virginia to be a part of any application for a permit to drill an oil or gas well in Tidewater Virginia.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the

limits of a known gas or oil reservoir.

"Facilities and equipment" means all surface infrastructure supporting the development, drilling, construction, completion or operation of any oil or gas operation including but not limited to well drilling equipment, well heads, separators, compressors, pumps, manifolds, vehicles, fluid circulation systems, waste handling facilities, valves, pipelines, etc., used to explore for, produce or transport oil or gas.

"Fiscal characteristics" means the structure of taxation, public revenue, public expenditure, and public debt.

"Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen casing head gas and all other fluids not defined as oil.

"Gas well" means any well which produces or is likely to be capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and drill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLS/T, as defined by the Food Security Act (F.S.A.) Manual of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid" and "very rapid") as found in the "National Soils Handbook" of July 1983 in the "Field Service Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service.

"Historic properties" means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the National Register of Historic Places or the Virginia Historical Landmarks Register including any artifacts, records and remains that are related to and located within such properties.

"Historic properties survey" means a survey undertaken to establish the presence or absence of historic properties, and any related and necessary management plans developed to conserve such resources.

"Land-disturbing activity" means any change in or reconfiguration of the land surface or vegetation on the land surface through vegetation clearing or earth moving activities including but not limited to clearing, grading, excavating, drilling, transporting or filling.

"Mcf" means, when used with reference to natural gas, one thousand cubic feet of gas at an atmospheric pressure of 14.73 pounds per square inch and at a temperature of 60 degrees F.

"Natural area preserve" means a natural area that has been dedicated pursuant to § 10.1-213 of the Code of Virginia.

"Natural heritage resources" means the habitat of threatened or endangered plant or animal species, rare or significant natural communities or geological sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Natural heritage survey" means a survey undertaken to establish the presence or absence of natural heritage resources, and any related and necessary management plans developed to conserve such resources.

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and which meet the technical criteria and field standards for wetlands set forth in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

"Oil or gas Operation" or "operation" means any activity relating to drilling, redrilling, deepening, stimulating, production, enhanced recovery, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging or replugging any well, ground disturbing activity relating to the development, construction, operation and abandonment of a gathering pipeline, the development, operation, maintenance and restoration of any site involved with oil or gas operations, or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or which contributes directly or indirectly to operations, including all roads. Section 62.1-195.1 requires an assessment to address production and transportation activities associated with oil or gas operations. Therefore, the definition also includes, for the purposes of this regulation, any activities relating to the development, construction, operation, maintenance, abandonment and restoration of pipeline systems, production facilities, and processing facilities; and

transportation activities conducted for the purpose of moving oil, gas, wastes, supplies or equipment from one location to another.

"Oil well" means any well which produces or is likely to be capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Operations area" means the location of the well, well site, associated facilities, production facilities, access roads, pipeline systems, and other related facilities and equipment necessary to the conduct of oil or gas operations.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

"Pipeline systems" means all parts of those physical facilities through which gas or oil moves in transportation, including but not limited to pipes, valves, and other appurtenances attached to pipes such as compressor units, metering stations, regulator stations, delivery stations, holders, or other related facilities.

"Pipeline corridor" means those areas which pipeline systems pass through or will be constructed to pass through, including associated easements, leases, or rights-of-way.

"Production well" means a well, related production facilities and equipment and activities related to the drilling of a well for the purpose of developing and producing, or converting an exploratory well to develop or produce, oil and gas from geological strata for the purpose of sale, exchange, transfer or use by the owner or for the purpose of exchange, transfer, sale or use by any other person.

"Rare, threatened or endangered species" means any insect, fish, wildlife or plant species which is listed as, is a candidate for listing as, or is recommended for listing as a rare, threatened or endangered species by the U.S. Fish and Wildlife Service, the Department of Agriculture and Consumer Services, the Department of Game and Inland Fisheries, or the Department of Conservation and Recreation.

"Scenic resources" means features which characterize an area by giving it a special visual identity or which present unique vistas or landscapes, including but not limited to such features as designated or candidate state or federal scenic rivers, federal or state scenic highways or parkways, Virginia byways, and scenic values as recognized by local, state or federal governments.

"Tidal wetlands" means "vegetated wetlands" and "nonvegetated wetlands" as defined in § 62.1-13.2 of the Code of Virginia.

"Tidewater Virginia" means that area of Virginia as defined in § 10.1-2101 of the Code of Virginia and the localities of Manassas and Manassas Park.

"Virginia Outdoors Plan" means the State Comprehensive Outdoor Plan administered by the Department of Conservation and Recreation.

"Waste fluids" means water and other liquids resulting from or produced by the development, drilling, construction, completion or operation of oil or gas operations and which contain or which may contain minerals, salts, oil or other hydrocarbons, sediment, and other chemical or physical constituents, and which include but are not limited to produced fluids, spent drilling fluids, fracturing fluids, and rigwash waters, etc.

"Well bore" means any shaft or hole drilled, bored or dug to explore for or to produce oil or gas.

§ 1.2. Authority.

This regulation implements § 62.1-195.1 of the Code of Virginia which requires the Council on the Environment to develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments for oil or gas well drilling operations in Tidewater Virginia.

§ 1.3. Purpose.

The purpose of this regulation is to set out criteria and procedures to be followed by oil or gas well drilling permit applicants when preparing environmental impact assessments and by the administrator, the council and its member agencies, other state agencies, local government officials, and the public when reviewing environmental impact assessments. It is intended to foster the development of useful information which is presented in a manner that assists the administrator, council and its member agencies, appropriate state agencies, Planning District Commissions, potentially affected local governments, and the public in understanding, analyzing and making decisions about the potential environmental, fiscal or economic impacts associated with drilling an oil or gas well in Tidewater Virginia and related production and transportation activities.

§ 1.4. Applicability.

A. The environmental impact assessment requirements and criteria apply to all oil or gas well drilling operations, whether an exploratory well or a production well, proposed to occur in Tidewater Virginia. Any person proposing to drill an exploratory well or production well in Tidewater Virginia shall submit to the department, as part of his application for a permit to drill such a well, an environmental impact assessment.

B. If the permit application is for an exploratory well, the assessment shall comply with the requirements and

criteria contained in Part II of this regulation. If the application is for a production well, the assessment shall meet all information requirements and criteria contained in Part II and Part III.

§ 1.5. General information requirements.

A. The environmental impact assessment is to contain information on and a discussion of the elements outlined in the following sections of this regulation. Discussions should be no longer than necessary to fully explain the issues and potential impacts in a given topical area. Data and analyses should be commensurate with the degree of impact.

B. An environmental impact assessment shall contain a title page; an executive summary; a table of contents; a list of figures; a list of tables; a list of maps and plats; the main body of the report as outlined in this regulation; a list of preparers; a topical index; an annex containing a list of local, state, or federal permits that are applicable to the proposed operations; and other annexes as needed. The executive summary shall summarize the assessment focusing on the major conclusions; the potential environmental, fiscal and economic impacts; and avoidance, minimization or mitigative measures proposed to address environmental, fiscal and economic impacts.

C. Where information contained in the permit application or any supporting documentation satisfies any of the criteria contained in this regulation, the applicant may choose to submit the permit application or supporting documents or any part thereof rather than repeat the information in the assessment. If a permit application or related documents are submitted to fulfill specific information requirements of this regulation, the appropriate information shall be clearly referenced in the assessment.

PART II.
INFORMATION REQUIREMENTS FOR EXPLORATION WELLS.

§ 2.1. Description of the oil or gas operation.

A. The applicant shall describe the oil or gas operation to be performed. The description of the oil or gas operation should include information on the location, size (length, height, width and area), and number of such facilities and related land requirements (including easements or rights-of-way). The information should also include a timetable for establishing, completing and removing drilling operations and constructing, operating and removing production facilities.

B. The discussion of the oil and gas operation shall be accompanied by:

1. A general location map depicting the operations area and surrounding areas at a map scale which is as detailed or more detailed than a map at a scale of 1:24000; and

2. Detailed site plat(s) of the proposed operations area at a scale no greater than 1:600 depicting the location of:

a. Proposed land-disturbing activities,

b. Facilities and equipment, pipeline corridors, and natural resource features discussed in § 2.2 that will be or could be affected by proposed operations,

c. Any existing manmade features within the proposed operations area, including but not limited to buildings, water wells, roads, drainage ditches, ponds, etc.

C. The description of gas and oil operations shall include a discussion of the following:

1. The type of drilling operation;

2. Power systems, energy or fuel sources necessary for drilling and associated facilities equipment operation;

3. Fluid circulation systems including a discussion of and a list of the proposed drilling fluids, fluid components, toxicity classification, and information on the projected amount and rate of drilling fluid production;

4. Well control and blowout prevention devices including a description of the proposed methods of containment of potential oil, gas or waste fluid releases;

5. Any proposed utility connections for water supply or sewage disposal purposes;

6. Projected types, quantities, and chemical characteristics of waste fluids, including any planned surface water or groundwater emissions;

7. Projected types, quantities, and chemical characteristics of solid wastes produced by oil or gas operations;

8. Proposed on-site and off-site solid and liquid waste management procedures including waste transfer areas and procedures, disposal areas or facilities, handling facilities and equipment, storage areas and related facilities and equipment, and proposed methods of disposal whether by land application, burying, injection or by other means;

9. Proposed environmental protection features and devices which will enhance the safety of the proposed operations;

10. Projected air emissions by type, quantity, and

duration resulting from proposed operations on an average daily basis;

11. Methods which will be used to acquire necessary water supplies to conduct proposed operations including the amount of daily withdrawals, daily or weekly fluctuations in withdrawal rates, duration of withdrawals, and any effects on stream flow, how much water will be needed to support operations, and how such water supplies will be used in the proposed operations;

12. Descriptions, presented in narrative and graphic format as appropriate, of proposed erosion and sediment control practices and stormwater management practices which will be installed to manage surface water quality; and

13. Descriptions, presented in narrative and graphic format as appropriate, of proposed site reclamation and revegetation plans for all operations areas.

D. A description of land-disturbing activities which will result from the proposed oil or gas operation should include a discussion of the size, extent and location of activities including the following activities:

1. The clearing of vegetation, including a description of the types of vegetation to be cleared;

2. Land grading and filling activities;

3. Constructing new or expanded access roads;

4. Constructing fluid reserve pits, sumps, dikes, tanks or similar devices; and

5. Constructing associated facilities whether inside or outside of the operations area.

§ 2.2. Description of the environment and natural resource features potentially affected by the oil or gas operation.

A. The discussion under this part shall include a description of the existing environment and natural resource features which will be or may be affected by the oil or gas operation and how they will be or may be affected. The analysis of the environment and natural resource features shall encompass, at the minimum, any area located within 1320 feet of a proposed well and within 100 feet of proposed pipeline systems or associated facilities. The 1320 foot distance is half of the statewide well spacing requirement set out for gas wells in § 45.1-361.17 and will ensure that the impact analysis for wells established in Tidewater Virginia at the statewide spacing will be tangential. The 100-foot distance from pipelines and associated facilities will ensure that Chesapeake Bay Preservation Areas or other environmentally sensitive resources that may be affected by the oil or gas operation will be detected. The potential for impacts by the proposed oil or gas operation on natural resource features and the environment which are located outside of the aforementioned area shall also be considered and discussed. The discussion shall be supported with graphic information in the form of a plat or plats at a scale between 1:1000 and 1:4000 showing the location of natural resources that will be or may be affected by the proposed operation. The discussion shall include, but not be limited to:

1. Physical site conditions such as:

a. Topographical features including relief, slope, project area elevation, and landscape features such as beaches, sand dunes, shorelines, etc.;

b. Surface water hydrology and drainage patterns including locations of embayments, rivers or streams and related subaqueous beds, tidal or nontidal wetlands, and the 100-year floodplain in the watershed potentially affected by the proposed operations;

c. Existing surface water quality characteristics and how water quality may be affected by emissions from proposed oil or gas operations;

d. Existing air quality and how air quality may be affected by emissions from proposed oil or gas operations;

e. Geological conditions such as groundwater hydrogeology, including the depths to the top and bottom of groundwater aquifers; general characteristics of the geologic strata to be penetrated by drilling activities; and a discussion of the possibility for land subsidence and any potential impacts associated with land subsidence which may result from oil or gas operations;

f. A description of the existing water quality of groundwater aquifers which will be or may be affected by drilling activities or liquid waste disposal activities focusing particularly on the potability of water in potentially affected aquifers and the extent to which identified aquifers are currently used as domestic or community water supplies;

g. A discussion of the soil types on which oil or gas operations will be located including an identification of prime agricultural lands, highly permeable soils, highly erodible soils, and soil profile descriptions of each representative soil series on the well site to a depth of 72 inches;

h. The identification and location of any public water supply intakes within the watershed where oil or gas operations will occur and located within 10 miles downstream of the proposed well site; or any public or private water supply wells located

within a one-mile radius of the proposed oil or gas well drilling operation; and

i. Chesapeake Bay Preservation Areas, both Resource Protection Areas (RPAs) and Resource Management Areas (RMAs), located within 1320 feet of the proposed operation area.

2. Biological conditions and resources including but not limited to:

a. A description of the terrestrial and aquatic habitat types and associated flora and fauna, including any natural heritage resources which are documented by performing a natural heritage survey in conformance with methodologies established by the Department of Conservation and Recreation, and any rare, threatened or endangered species present;

b. A description of the use patterns of terrestrial habitat by wildlife including areas such as nesting, roosting, breeding and calving areas or other unique natural habitat;

c. A description of the use patterns of freshwater, estuarine and marine habitat by terrestrial and aquatic species, including but not limited to submerged aquatic vegetation, fish spawning areas, shellfish beds, habitat of anadromous fish and other finfish, and benthic organisms; and

d. State Wildlife Management Areas, State Natural Area Preserves, National Wildlife Refugees, or elements of Virginia's National Estuarine Research Reserve System or other unique or important natural communities.

3. Culturally important areas such as historical and recreational resources, including those resources listed in the Virginia Outdoors Plan, including but not limited to:

a. Historic properties which are documented by performing a historic properties survey in conformance with guidelines established by the Department of Historic Resources;

b. Public beaches;

c. Scenic resources;

d. Public water access sites;

e. Local, state, or national parks, recreational areas or forests;

f. State-owned or state managed lands;

g. Federally-owned or federally managed lands;

h. Easements held for agricultural, forestal, open space, horticultural or other conservation purposes; and

i. Prime agricultural lands as identified by the U.S. Soil Conservation Service and important farm lands as identified by the Virginia Department of Agriculture and Consumer Services.

B. Describe the typical noise levels currently existing at the proposed operations areas. Describe any oil or gas operation activities that will produce noise over 65 decibels measured at the boundary of the operations area, the source and daily duration of those activities producing the noise, and the estimated external noise level at the nearest noise receptor such as a residence, school, hospital, business, public meeting place, feature identified in the Virginia Outdoors Plan, or wildlife habitat. The applicant should describe what measures will be taken to reduce projected exterior noise levels below 65 decibels at the nearest receptor.

C. Describe any activities associated with the oil or gas operation that will produce light or glare within the operations area after sundown and before dawn. Describe the hours that artificial lighting sources will exist, including flaring of wells, gas processing facilities, or production facilities, the intensity of any light sources, and the time such light sources would be in operation. Describe the potential aesthetic, nuisance, safety, or environmental hazards that light or glare may produce outside of the operations area. Describe any steps that will be taken to minimize light or glare.

D. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on natural, scenic, recreational, and historic resources identified in the assessment. The assessment shall also discuss irrevocable or irreversible losses of the natural resources identified in the assessment.

§ 2.3. Procedures for estimating the probability of a discharge.

A. The assessment shall provide an analysis of the probabilities of accidental discharges of oil, condensate, natural gas, and waste or other liquids being released into the environment during drilling, production, and transportation due to well blowout, equipment failure, transportation accidents and other reasons. Such an analysis shall include calculations based upon generally accepted engineering failure analysis procedures. An applicant shall calculate a spill probability analysis for three sizes of discharge events – minor, moderate, or major. The applicant shall define the categories of minor, moderate or major discharge and describe the sources of information used to formulate the analyses and the assumptions used to construct the analyses. Discharge probability analyses for minor discharges should include calculations for a discharge that would not be expected to escape the operations area.

§ 2.4. Procedures for determining the consequences of a discharge.

The environmental impact assessment shall include a description of potential environmental and natural resource effects associated with discharges including the consequences of a discharge on finfish, shellfish and other marine or freshwater organisms; birds and other wildlife; air and water quality; and land and water resources. The spill analysis shall be completed for oil, condensate, waste or other fluids, and natural gas discharges resulting from minor, moderate or major discharges as defined and described pursuant to the requirements of § 2.3.

§ 2.5. Spill release and contingency planning.

A. The environmental impact assessment shall describe procedures which will be developed and implemented to prepare for, equipment which will be installed to detect and respond to, and facilities and equipment which will be installed to contain minor, moderate and major discharges of oil, condensate, natural gas, waste or other fluids as defined pursuant to the requirements of § 2.3 as well as fires or other hazards to the environment. A Spill Prevention Control and Countermeasure Plan prepared in conformance with the requirements of Title 40, Code of Federal Regulations, Part 112 (40 CFR Part 112) may be submitted to fulfill the information requirements of this section.

B. Such discussions should describe the following:

1. Safety devices which will be installed to ensure early detection of accidental or unexpected discharges from oil or gas operations involving fuels, oil, gas or wastes, and a timetable for inspecting and maintaining discharge detection and response equipment, pipeline systems and other equipment and facilities.

2. Identification of:

a. Response equipment, supplies and materials available from the operator, selected private contractors or local or regional emergency response sources such as public fire or rescue services;

b. Projected response times by identified response personnel;

c. Proposed discharge emergency notification system including designation of individuals and alternates who will provide the notice of a release and the identification of those agencies or individuals who will be notified in the event of a release;

d. Responsible private, local, state, or federal emergency response personnel and the needs and requirements of these groups regarding information on hazardous and flammable materials, regardless of materials weight or volume, used or stored in the project area; and

e. Information on a discharge response strategy to be followed by the operator, his employees, private response contractors, and local, state, or federal response personnel for emergency situations that may arise in connection with oil or gas operations.

3. Specific actions to be taken if a discharge is discovered including:

a. Designation of a response coordinator who will be responsible for directing spill response operations;

b. Designation of a location for a discharge response operations center and provision of a reliable communications system for directing response operations;

c. Designation of the operator's employee responsibilities in case of a release event and a discussion of the training employees will receive to ensure they are capable of handling assigned responsibilities; and

d. Provisions for the clean-up, abatement or disposal of discharged materials including oil, produced waters, wastes, contaminated materials used in response activities, or materials affected and contaminated by the discharge.

§ 2.6. Hydrogen sulfide release contingency planning.

A. A discussion of the potential for encountering hydrogen sulfide shall be included in the assessment. The assessment shall discuss steps that will be taken to respond if indicators of such gas are encountered, if there exists a potential for a release of hydrogen sulfide gas, or in the event of a hydrogen sulfide release. A hydrogen sulfide contingency plan prepared in conformance with requirements set forth by the department by regulation may be submitted if it meets the criteria set forth in this section.

B. A hydrogen sulfide release contingency plan should address the following:

1. Methods and devices that will be used to detect hydrogen sulfide gas to prevent the gas from becoming an environmental concern. Include a description of detection equipment to be used and equipment testing and calibration procedures.

2. Operating procedures to be employed if the operations area atmospheric concentration of hydrogen sulfide gas reaches (i) 5 ppm (7 mg/m^3), (ii) 10 ppm (14 mg/m^3), and (iii) 25 ppm (35 mg/m^3) and including a discussion of:

a. Appropriate emergency notification procedures

for local residents, emergency service and medical personnel;

b. Notification procedures for responsible regulatory agencies; and

c. Appropriate visual and audible warning systems for excursions of atmospheric hydrogen sulfide gas above 5 ppm (7 mg/m³) within the operations area.

3. The potential for low-level hydrogen sulfide emissions (one hour average) to result in concentrations in areas of public access above levels deemed harmful to human health. Provide an air quality screening analysis of the effects of low-level hydrogen sulfide emissions on ambient air from designed emission points and from likely upset events.

§ 2.7. Economic impacts.

A. Describe the potential impacts of the proposed oil or gas operation on the economic characteristics of the affected locality and, as necessary, surrounding localities. The information should address how these economic characteristics will be affected during (i) the drilling and construction phases of oil or gas operations, and (ii) the production phases of oil or gas operations. In all projections constructed by the applicant, the methodology for constructing projections and the assumptions, calculations and computations used to formulate projections should also be presented and described.

B. The description should include information on the following conditions:

1. An analysis of the potential positive or negative effects of the proposed oil or gas operation on the current population with regard to potential changes in the demographic structure of the locality according to age, income and employment characteristics;

2. An analysis of the projected employment levels including estimates of the variation in employment levels over time for (i) the drilling and construction phases of the oil and gas operation, including the construction of pipeline systems, associated facilities and production facilities, and (ii) the production phases of the proposed operation. Indicate whether any new positions created by the proposed construction and operations activities may be or will be filled from the labor pool available in the affected locality or in neighboring localities;

3. The types of services that can be provided from businesses located in the affected locality or in surrounding localities. Include a general estimate of the amount of contract awards that will be or could be made available to service providers in the affected locality and neighboring localities and the projected duration of service contracts;

4. The existing land uses, including residential, forestal, agricultural, commercial, industrial, urban, suburban, open space, recreational or other land use characteristics within the locality that will be affected, changed or which may be subject to change as a result of the proposed oil or gas operation. The discussion shall be supported with graphic information in the form of a plat or plats of existing land uses within 1320 feet of the well and within 100 feet of associated facilities and pipeline systems at a scale between 1:1000 and 1:4000; and

5. The affected locality's industrial and commercial bases and economic conditions with emphasis on dominant economic sectors (i.e., agriculture, forestry, fishing and aquaculture, service industries, and industrial activities.) Special attention should be given to the tourism and recreation industries and how they may be affected by the oil or gas operation. Describe how the proposed location of the oil or gas operation may adversely affect or displace other natural resource-based commercial activities and enterprises in the affected locality or in neighboring localities such as agriculture, fishing, tourism, forestry, etc.

C. Describe the actions and measures that will be taken to avoid impacts, minimize impacts, and mitigate unavoidable impacts on economic characteristics identified in the assessment.

§ 2.8. Fiscal impacts.

A. The assessment should present an analysis of the existing fiscal characteristics and physical infrastructure in the county, city, or town where the proposed oil and gas operations are to be located and how they may be affected by the proposed oil or gas operation. In all projections of potential effects on infrastructure and related fiscal impacts, methodologies for constructing projections, related assumptions, calculations and computations used to formulate projections should also be presented and described.

B. The assessment should address the following fiscal and infrastructure elements:

1. The transportation systems including roads, railroads or existing oil or gas pipelines that are available to support the oil or gas operation and how they will be affected by the proposed oil or gas operation. The discussion should include an estimate of the number of vehicle trips that will be generated on the transportation system, the size of any operational support vehicles, and the design capacity of affected roads relative to the projected size, weight and volume of vehicle traffic;

2. Infrastructure and capital facility support systems available including utility services, water services, sewer services, solid waste disposal services and facilities, etc. and the projected demands the proposed

oil or gas operation will place on such systems and their existing capacity to respond to that demand. Identify any needed upgrades or expansion of related infrastructure, equipment or services, estimate the cost of providing upgrades, and describe how the applicant will assist in providing resources to met such needs;

3. The availability of public safety and health services such as hospitals, emergency rescue services, police and fire services and related infrastructure and the capacity to respond to accidents or incidents that may result from the oil or gas operation. Identify any needed upgrades or expansion of related infrastructure, equipment or services, estimate the cost of providing upgrades, and describe how the applicant will assist in providing resources to meet such needs;

4. The distribution of existing temporary and permanent housing units within the locality and whether these will be adequate to accommodate the projected influx of the oil or gas operation workers. Discuss how any need for temporary housing may affect existing land uses. Also, discuss how any projected housing needs will be met by the applicant if available units are insufficient to meet the projected housing demand; and

5. The public service needs, including but not limited to educational services, recreational needs, and social services, that will be generated by the immigration of laborers into the affected locality in support of the oil and gas operation. Discuss the capacity of these services and whether the existing capacity is sufficient to handle the projected population increase. If the existing capacity is projected to be insufficient to meet anticipated needs, the applicant should explain what measures will be necessary to address increased service needs.

C. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on fiscal characteristics identified in the assessment associated with the expansion or development of infrastructure to support the proposed oil and gas operation.

PART III.
INFORMATION REQUIREMENTS FOR PRODUCTION WELLS.

§ 3.1. Information requirements for production wells.

A. An environmental impact assessment describing a proposed production well shall address all of the criteria set forth in Part II.

B. In addition to information required by § 3.1 A the environmental impact assessment for a production well shall include a discussion of the following:

1. Any planned enhanced recovery activities related to production of oil or gas from the proposed well;

2. Any activities associated with the proposed well which will result in land-disturbing activities necessary to construct and install pipeline systems including proposed trenching, earth-moving, or vegetation clearing activities and a discussion of the size, extent, and location of proposed land-disturbing activities;

3. Any activities associated with the proposed well which will result in land-disturbing activities necessary to construct and install oil or gas production facilities and equipment, including proposed trenching, earth-moving, or vegetation clearing activities and a discussion of the size, extent, and location of proposed land-disturbing activities;

4. The revenue structure, expenditure levels and financial capabilities of the affected local government and a projection of new services or expenditures that will be incurred by the local government as a result of the proposed oil or gas operation. The applicant should identify measures that may be necessary to expand or maintain services, revenue sources, expenditure levels, and capital needs of the affected local government due to the proposed oil or gas operation;

5. A description of new transportation systems necessary to support development and production activities, including any new pipeline systems and roads, the person who will be responsible for constructing or installing new pipelines systems or new or upgraded public roads, how much upgrades may cost, and how the applicant may assist in developing and upgrading necessary transportation systems; and

6. A description of any new, upgraded or expanded infrastructure and capital facilities that will be necessary to support the proposed oil or gas production operations, estimates of how much upgrades may cost, and the persons or persons who will be responsible for providing any necessary infrastructure or capital facilities.

§ 3.2. Examination of secondary environmental impacts due to induced economic development.

Based on the analysis of potential economic impacts identified in § 2.7, fiscal impacts identified in § 2.8, and impacts associated with production addressed in § 3.1, examine and discuss the potential secondary environmental affects of induced economic development due to the proposed oil or gas operation. Such analysis should include impacts associated with any new infrastructure development provided to support the oil or gas operation including but not limited to the construction of new roads, sewers, schools, water supplies, public services, waste handling facilities, housing units, etc., on

natural, scenic, recreational, and historic resources.

PART IV.
COUNCIL MEMBER AGENCY AND GENERAL PUBLIC REVIEW AND COMMENT PROCEDURES.

§ 4.1. Council notification by the department.

Upon receiving an environmental impact assessment for an oil or gas well drilling operation in Tidewater Virginia, the director shall notify the administrator that a coordinated review must be initiated. The applicant shall provide the department with 17 copies of the environmental impact assessment and the department will deliver the copies to the administrator. The 90-day review process will begin upon receipt of the appropriate number of copies of the environmental impact assessment by the administrator.

§ 4.2. Initiation of assessment review by state and local agencies and by the general public.

A. The administrator shall prepare and submit a general notice for publication in the Virginia Register within three days of the receipt of an environmental impact assessment. The availability of an assessment shall be given public notice, paid for by the applicant, by publication in a daily newspaper having a general circulation in the locality where drilling is proposed. The administrator shall also develop a mailing list containing the names of persons who indicate they want to be notified about the availability of oil or gas environmental impact assessment documents and will forward a copy of the general notice submitted for publication in the Virginia Register to those persons on the mailing list.

B. The general notice will contain the following information:

1. The proposed location of the oil or gas operations including the name of the locality and other general descriptive information regarding the location of the proposed operation,

2. A general description of the proposed operation,

3. The deadline for the general public to submit written comments, which shall not be less than 30 calendar days after publication of the notice,

4. A designated location where the environmental impact assessment can be reviewed,

5. A contact person from whom additional information can be obtained on the environmental impact assessment, and

6. An address for mailing comments on an assessment to the administrator.

C. The administrator shall submit copies of the environmental impact assessment to all council member agencies, to the chief executive officer of the affected local government, to the executive director of the affected Planning District Commission, and to other state or local agencies requesting a copy of the assessment. Council member agencies shall provide their cooperation in reviewing environmental impact assessments submitted by applicants. State agency comments shall be returned to the administrator as soon as possible but no later than 50 calendar days after receiving a copy of an assessment from the administrator.

D. The administrator may decide, in consultation with the director, to hold a public information hearing on an impact assessment. Such a public hearing, if any, shall be held during the public comment period in the locality in which the operation is proposed. Notice of such a hearing, including the date, time, and location of the meeting, will be announced in a general notice published in the Virginia Register and in a notice mailed to persons on the mailing list.

§ 4.3. Review of comments.

The administrator shall review all written state agency, local government, Planning District Commission, and public comments and any written or oral comments received during any public hearing. based on the administrator's review of written comments, oral and written comments received at public hearings, and the environmental impact assessment, the administrator will prepare and submit a written report to the director. The written report will contain findings and recommendations for conditions suggested for inclusion in the permit to drill issued by the department. The administrator's findings and recommendations on an assessment will be available for public inspection at the offices of the council.

DEPARTMENT OF HEALTH

1992 WIC Program

NOTICE: The proposed Virginia WIC Program State Plan for Federal Fiscal Year 1992 has been filed with this office and is available for public inspection. On June 21, 1991, the State Board of Health gave this document preliminary approval for public comment and subsequent submission to the United States Department of Agriculture as required by federal regulations.

Please refer to the General Notice Section of the Register for a notice to provide opportunities for public input regarding the manner in which the Virginia WIC Program is administered.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

NOTICE: This regulation is exempted from the Administrative Process Act in accordance with § 9-6.14:4.1 A 15 of the Code of Virginia, which excludes guidelines that are developed, issued, and revised pursuant to § 23-9.6:2 of the Code of Virginia.

Title of Regulation: **VR 380-04-01. Tuition Relief, Refund, and Reinstatement Guidelines.**

Statutory Authority: § 23-9.6:2 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until July 30, 1991.

Summary:

These guidelines are intended to provide a framework for the state-supported institutions of higher education in Virginia to develop their own policy statement with regard to the tuition relief, refund, and reinstatement of all persons whose active military duty during a national emergency required their sudden withdrawal or prolonged absence after January 1, 1990.

In these guidelines each institution is asked to explain its policy in regard to the refund of tuition and fees, room and board, deposits, and textbooks. The institutions are also required to note their policy relating to academic credit and reinstatement.

Each institution is required to file its policy by October 1, 1991, with the Council of Higher Education. These guidelines will be periodically revised by institutional representatives.

Though most institutions have some form of these guidelines in place, these are designed to ensure that all institutions have comparable policy statements.

Due to the crisis in the Persian Gulf, many students had to leave suddenly and were unable to complete classes and responsibilities. These guidelines are to help the students be readmitted or reimbursed for classes they were unable to complete.

The impact of the guidelines will be to give some regularity to the process and to make the transition easier for the military personnel. Because most schools already have policies of one form or another, the cost to the institutions to implement their policy statements will be minimal.

VR 380-04-01. Tuition Relief, Refund, and Reinstatement Guidelines.

§ 1. General.

Pursuant to § 23-9.6:2, these guidelines are duly issued by the State Council of Higher Education to ensure the application of uniform criteria in providing for the tuition relief, refund, and reinstatement of students whose active military duty or mobilization during a national emergency has required their sudden withdrawal or prolonged absence from their enrollment in Virginia institutions of higher education.

§ 2. Definitions.

For purposes of this section, the following definitions shall apply, unless the context clearly indicates otherwise:

"Tuition relief" and "refunds" refer to the actual price of education charged to students during the semester in which they are called suddenly to active duty or mobilization and the amount of the payment to be returned to students, if any, because of their sudden withdrawal from Virginia institutions. The presumption is that any students called to active duty or mobilization under the circumstances described in § 23-9.6:2 of the Code of Virginia shall be entitled to a refund of some portion of the tuition and required fees, as well as certain other costs, paid to the institutions to cover the price of attending during the semester in which they withdrew.

"Reinstatement" refers to the conditions under which students who are called suddenly to military duty or mobilization under the circumstances described in this section of the Code shall be entitled to be readmitted to the institutions from which they withdrew following the conclusion of their service on active duty or mobilization.

"National emergency" refers to any operation, including a defense crisis, in which the President of the United States declares a sudden mobilization that includes members of the Virginia National Guard of the active or reserve forces of the U.S. armed forces who are students enrolled in Virginia institutions of higher education.

"Sudden withdrawal" refers to students leaving institutions after a semester has begun or after the tuition and required fees for a semester have already been billed to or paid by students to their respective institutions.

"Prolonged absence" refers to the length of time the students called to active duty or mobilization remain under military orders as a result of the national emergency.

§ 3. General rules.

Pursuant to § 23-9.6:2, each state-supported institution of higher education shall adopt a policy providing for the tuition relief, refund, and reinstatement of students whose active military duty during a time of national emergency has required their sudden withdrawal or prolonged absence from their enrollment in Virginia institutions of higher education. The policy statement shall provide for the following:

1. Tuition and required fees. The policy will describe how a student who meets the requirements of this section shall be entitled to receive a partial or full refund of the tuition and required fees that have been billed or paid for the semester in which the student is forced to withdraw. The institution shall describe the factors that determine the amount of a refund and shall provide, at the option of the student, for such funds to be retained to be applicable to the tuition and fees charge in the semester in which the student returns to study. The institution's tuition and fee policy with regard to this section may be different from its refund policy under other circumstances. The institution shall follow all applicable federal and state regulations pertaining to refunds when financial aid programs are involved.

2. Room and board. The policy will provide for a pro rata refund for room and board paid to the institution.

3. Deposits. The policy will provide for refunding or crediting deposits made with the intent of securing future facilities or services.

4. Textbooks. The policy will indicate whether refunds will be available and, if so, in what amount if the textbooks were purchased through the institution's bookstore.

5. Academic credit. The policy will describe a student's options concerning grades assigned for the semester in which a call to active duty or mobilization occurs. The policy shall provide reasonable time for a student to eliminate any "pending" grades (including "incomplete," "in progress," etc.) following a student's return from active duty or mobilization.

6. Reinstatement. The policy will detail the circumstances under which a student shall be allowed to reenroll following the student's release or return from active duty or mobilization. Generally, a student who is called to active duty or is mobilized should be assured a reasonable opportunity to reenroll in the same program of studies without having to reapply for admission if the student returns to the same institution within one year of completing service required as a result of the national emergency.

§ 4. Special rules.

A. These guidelines shall be revised periodically by an advisory committee of institutional representatives as provided for in § 23-9.6:2.

B. These guidelines shall become effective after July 1, 1991. Each institution shall file its policy statement incorporating these guidelines with the State Council of Higher Education no later than October 1, 1991.

C. These guidelines shall apply to all persons whose active military duty or mobilization required their sudden withdrawal or prolonged absence after January 1, 1990.

D. As provided in § 23-9.6:2, these guidelines shall be incorporated by all public institutions of higher education in their tuition and enrollment policies. In accordance with House Joint Resolution 454, Virginia private institutions are requested to follow the guidelines.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

NOTICE: The Virginia Housing Development Authority is exempted from the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia); however, under the provisions of § 9-6.14:22 B, it is required to publish all proposed and final regulations.

Title of Regulation: **VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabilitation Program.**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until August 15, 1991.
(See Calendar of Events section for additional information)

Summary:

The proposed amendments to the rules and regulations for Virginia rental rehabilitation program ("rules and regulations") will correct references to the Code of Federal Regulations as some section numbers have been changed due to amendments to the federal regulations and will modify certain time limits, funding priorities, funding limits and the method of rental assistance allocations in accordance with such amendments to the federal regulations.

VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabilitation Program.

§ 1. Definitions.

The following words and terms, when used herein, shall have the following meaning, unless the context indicates otherwise.

"Grantee" means any unit of local government that enters into a grant agreement with the authority to administer a rental rehabilitation grant.

"HUD" means the U.S. Department of Housing and Urban Development.

"Section 8" means Section 8 of the United States Housing Act of 1937, as amended, and the applicable rules and regulations promulgated thereunder.

These definitions supplement those contained in 24 CFR 511.2 and other applicable sections of the Code of Federal Regulations. Only those terms not defined in the Code of Federal Regulations or used differently herein have been defined.

§ 2. Purpose and applicability.

These rules and regulations are adopted pursuant to § 36-55.30:3 of the Code of Virginia.

The following rules and regulations are applicable to all grants made by the authority to units of local government with funds allocated to the authority by HUD for the purpose of carrying out local rental rehabilitation programs for the benefit of lower income families and persons. Such grants are referred to herein as "rental rehabilitation grants."

Rental rehabilitation grants may be made to Grantees pursuant to these rules and regulations only if and to the extent that the authority has received from HUD grant funds available therefor.

These rules and regulations supplement and clarify rather than supercede federal program requirements. The authority and all local grantees are fully bound by the applicable requirements of 24 CFR Part 511, as well as governing federal and state laws in the administration and use of funds received from HUD under the federal Rental Rehabilitation Program.

Notwithstanding anything to the contrary herein, the Executive Director is authorized with respect to any rental rehabilitation grant to waive or modify any provisions herein where deemed appropriate by him for good cause, to the extent not inconsistent with the Act and any applicable federal regulations.

All reviews, analyses, evaluations, inspections, determinations and other actions by the authority pursuant to the provisions of these rules and regulations shall be made for the sole and exclusive benefit and protection of the authority, and shall not be construed to waive or modify any of the rights, benefits, privileges, duties, liabilities or responsibilities of the authority or the grantee under the agreements and documents executed in connection with a rental rehabilitation grant.

The rules and regulations set forth herein are intended to provide a general description of the authority's requirements and are not intended to include all actions involved or required in the administration of grants under the Virginia Rental Rehabilitation Program. These rules and regulations are subject to change at any time by the authority and may be supplemented by policies, rules and regulations adopted by the authority from time to time with respect to the Virginia Rental Rehabilitation Program.

§ 3. Program eligibility.

A. Eligible localities.

The authority will accept applications for rental rehabilitation grants from any city, town or county determined by HUD to be eligible for participation in the Virginia Rental Rehabilitation Program. The authority will maintain a current listing of eligible local governments.

B. Eligible neighborhoods.

Applicants must document that each neighborhood in which rental rehabilitation grants are used meets the following two conditions:

1. Neighborhood income level.The median household income in the neighborhood must be at or below 80% of the median income for the Metropolitan Statistical Area (MSA) in which it is located, or, in the case of a neighborhood not within a MSA, at or below 80% of the median income for the state's nonmetropolitan areas.

2. Rent stability/affordability. Rents in the neighborhood must be stable and generally affordable to lower income persons. An applicant must document rent stability/affordablity in one of the following three ways:

a. Rent trends. An applicant may document that, according to the U.S. Census, the increase in average contract rent in the neighborhood between 1970 and 1980 was equal to or less than the increase in average contract rent in the housing market area;

b. Current rent survey. An applicant may survey current neighborhood rents to document that rents are generally at or below the Section 8 Fair Market Rent limits for existing housing; or

c. Other evidence. An applicant may document that, according to the 1980 U. S. Census, the median gross rent in the neighborhood was at or below the Section 8 Fair Market Rent limit for an existing two-bedroom unit that was applicable for the housing market area in April, 1980, and provide some type of evidence that the neighborhood housing market has been stable since 1980 (e.g., assessed property values or building permit activity have not increased more rapidly than in the housing market area as a whole).

C. Eligible projects.

Rental rehabilitation grants may only be used to rehabilitate projects meeting the requirements of ~~24 CFR 511.10(c)~~ *24 CFR 511.11* .

§ 4. Allocation of funds.

A. Types of allocations.

The authority will accept the following two types of applications from eligible local governments for rental rehabilitation grants:

1. General allocations. The authority will make allocations of funds to local governments on a first-come, first-served basis for use in carrying out locally-designed rental rehabilitation programs. The following conditions will apply:

a. Each local allocation will be limited to a specific dollar amount.

b. Once a local government has committed 80% of its funds to specific projects, it will be eligible to apply for an additional general allocation.

c. An initial allocation to a grantee will expire ~~12 months~~ *on a date determined by the authority which shall be no less than six months and no more than 18 months* after the date the authority enters into a grant agreement with the grantee with respect to such allocation; provided, however, that the authority may, in its discretion, extend the term of an allocation one or more times for a period not to exceed 12 months for each such extension.

d. Upon the expiration of an allocation, any uncommitted grant funds will be recaptured.

e. The authority will reserve the right to recapture monies from an additional general allocation prior to its expiration, if necessary, due to poor local performance and the need to commit state program funds in a timely manner.

2. Funding for specific projects. The authority will fund, on a first-come, first-served basis, applications submitted by eligible local governments for specific projects. The following conditions will apply:

a. Total funding, including any prior general or project allocations, will be limited to a specific dollar amount.

b. A locality with an uncommitted general allocation will be expected to commit these funds to the project prior to requesting additional monies.

The funding limit for specific projects will be lifted only in the event that state grant monies are not being committed in a timely manner.

B. Application procedures.

The authority shall, from time to time, give notice of funds availability to eligible units of local government throughout the Commonwealth. Such notice will may include the applicable funding limits and a timetable for the submission and review of applications for each type of funds allocation.

Specific application requirements and review procedures will be provided in application packets and through such workshops/training sessions as the authority deems appropriate. Applications for grant funds will be expected to include the followng types of information:

1. General allocations. Applications for general allocations will include an identification and description of program neighborhoods; the locality's method of identifying and selecting projects; a description of local program operating procedures; a description of steps to be taken to ensure adequate maintenance and operation of projects receiving rental rehabilitation funds; a description of steps to be taken to encourage the use of minority and women-owned businesses; a description of the anticipated form of assistance to be provided to property owners and the means by which the amount of assistance will be determined; an indication of the anticipated source of matching funds; a description of any assistance to be provided to property owners in obtaining matching funds; an affirmative marketing plan (see § 5.I.2.); an agreement to comply with all federal and state program requirements; and other information as requested by the authority in the application packet.

2. Funding for specific projects. An application for funding for a specific project will include information concerning the project's conformance with neighborhood standards'; a description of local program operating procedures; a description of steps to be taken to ensure adequate project maintenance and operation; a description of steps to be taken to encourage the use of minority and women-owned businesses; a description of the project's financing package; an affirmative marketing plan; information concerning expected displacement/relocation of lower income persons; an agreement to comply with all federal and state program requirements; and other information as requested by the authority in the application packet.

3. Requests for increases in allocations. After receiving an allocation of funds under the Virginia Rental Rehabilitation Program, a grantee may request an increase in such allocation by applying therefor on such form or forms as the authority shall provide.

C. Grant agreement.

Upon the approval of an application for funding, the authority will enter into a grant agreement with the local government stating the terms and conditions under which funds will be provided.

§ 5. Program requirements.

A. Lower income benefit.

Each grantee must use at least 70% of its rental rehabilitation grant to benefit lower income families in

accordance with ~~24 CFR 511.10(a)(4)~~ *24 CFR 511.10(a)(2)* . This benefit standard must be maintained by each grantee in its program at all times unless waived by the authority. A waiver will only be approved when such a waiver will not prevent the authority from achieving an overall 70% benefit standard in the Virginia Rental Rehabilitation Program.

B. Family benefit.

Each grantee must use at least 70% of its rental rehabilitation grant to rehabilitate units containing two or more bedrooms in accordance with ~~24 CFR 511.10(k)~~ *24 CFR 511.10(b)* . This standard must be maintained by each grantee in its program at all times unless waived by the authority. A waiver will only be approved when such a waiver will not prevent the authority from achieving an overall 70% standard in the Virginia Rental Rehabilitation Program, except in cases where the authority has applied for and received from HUD a special waiver form the 70% standard.

C. Funding priorities.

Each grantee must include the following priorities in its method for selecting projects to receive rental rehabilitation funds.

1. Units occupied by very low income families. Each grantee must give funding priority to projects which contain substandard units which, prior to rehabilitation, are occupied by very low income families. This priority may include unoccupied units ~~if:~~ *if the units could be expected to be occupied by very low income families but for the units' substandard condition.*

~~a. The units could be expected to be occupied by very low income families but for the units' substandard condition; and~~

~~b. The grantee agrees to assign Section 8 certificates and/or vouchers for at least 70% of the rehabilitated units in order to enable it to be occupied by very low income families.~~

2. Efficient use of grant funds. Each grantee must give funding priority to projects which require a minimum percentage of rental rehabilitation grant subsidy.

Proposed projects meeting these priorities, which are financially feasible and which meet all other program requirements, must be selected for funding prior to projects which do not meet the priorities. In cases where these priorities conflict, the first priority must be given precedence by grantees.

D. Adequate maintenance and operation of rehabilitated units.

Each grantee must adopt one or more of the following measures to ensure adequate maintenance and operation of projects receiving rental rehabilitation funds:

1. Establishment of minimum equity requirements for investors;

2. Assignment of priority to projects in which private investors and lenders are taking a long-term financial risk in project success;

3. Restriction of funding to investors with a satisfactory record of maintaining and operating rental housing (the applicant must have standards and procedures for assessing an investor's record); or

4. Establishment of other reasonable standards and/or procedures for ensuring adequate maintenance and operation of rehabilitated units.

E. Project funding limits.

Each grantee must comply with the maximum project funding limits set by ~~24 CFR 511.10(e)~~ *24 CFR 511.11(e)* .

~~The authority will seek a waiver from HUD of the $5,000 average per unit funding limit for a specific project at the request of a grantee if the grantee can document a need for such a waiver in accordance with 24 CFR 511.10(e)(2).~~

F. Minimum level of rehabilitation.

A grantee may establish a minimum level of rehabilitation to be required for participation in its rental rehabilitation program in excess of that established in ~~24 CFR 511.10(f)~~ *24 CFR 511.10(d)* .

G. Eligible rehabilitation costs.

A grantee may use a rental rehabilitation grant only to cover costs permitted under ~~24 CFR 511.10(g)~~ *24 CFR 511.10(f)* . No more than 20% of the rental rehabilitation funds assigned to a project may be used to make relocation payments to tenants who are displaced by rehabilitation activity.

H. Displacement and tenant assistance.

A grantee must provide any lower income family displaced from a project assisted by a rental rehabilitation grant with financial and advisory assistance as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 USC 4601. A family will be determined to be displaced in accordance with the definitions contained in ~~24 CFR 511.10(h)(1)~~ *24 CFR 511.14* . No tenant will be considered displaced if the tenant has been offered a decent, safe and sanitary dwellng unit in the project at an affordable rent.

I. Affirmative marketing.

Each grantee must ensure the affirmative marketing of units in rehabilitated projects *with five or more residential units* for a period of ~~seven~~ *10* years beginning on the date on which all the units in a projects are completed, in accordance with ~~24 CFR 511.10(1)(2)~~ *24 CFR 511.13(b)* . "Affirmative marketing" is defined as adherence to federal, state and local fair housing laws, and positive efforts to ensure that persons of similar income levels in the same housing market area are made aware of a housing project and its benefits regardless of race, creed, religion, national origin, sex or handicap. All fair housing laws must be scrupulously observed by those who participate in the Virginia rental rehabilitation program. Failure to comply with affirmative marketing requirements will subject the grantee and/or property owner to sanctions.

In order to meet its affirmative marketing responsibilities, each grantee must comply with, or ensure property owner compliance with, the following requirements and procedures:

1. General requirement. In conjunction with the marketing of all rehabilitated units, except for units occupied by families receiving Section 8 certificates or vouchers, the following five specific requirements must be met:

a. All advertising, brochures, leaflets and other printed material must include the Equal Housing Opportunity logo and the slogan or statement, and all advertisng depicting persons must depict persons of majority and minority groups, including both sexes;

b. The Equal Housing Opportunity slogan, "Equal Housing Opportunity," utilized in the newspaper classified advertisements should be at least eight point boldface type, and display advertising must include the Equal Housing logo and slogan;

c. If other logotypes are used in the advertisement, then the Equal Opportunity logotype should be of a size equal to the largest of other logotypes;

d. All signs, off-site and on-site, must prominently display the logo and slogan, or the statement in a size that would not be smaller than the largest letters used on the sign; and

e. The logo and slogan, or the statement and the HUD Equal Housing Opportunity Poster (HUD Form 928.1 dated 7-75), must be prominently displayed in the on-site office or wherever applications are being taken.

2. Affirmative marketing plan. Any local government making application to the authority for a rental rehabilitation grant must submit as part of its application, on a form supplied by the authroity, a local affirmative marketing plan covering the leasing of all rehabilitated units, except for those occupied by families receiving Section 8 certificates or vouchers. Such plan must include the following information for each neighborhood in which the local government proposes to operate a rental rehabilitation program:

a. An identification of the predominant racial/ethnic composition of the neighborhood;

b. An identification of the group(s) in the housing market area that are least likely to apply for housing in the neighborhood because of its location and other factors without special outreach efforts;

c. An identification of the types of advertising and outreach procedures (e.g., use of community contacts) which participating property owners may use to meet their affirmative marketing responsibilities;

d. A description of the information to be provided to participating property owners, their staff or managing agents to enable them to carry out their affirmative marketing and fair housing responsibilities; and

e. The anticipated results of the local affirmative marketing plan (i.e., the percent of vacancies expected to be filled by the identified target group(s)).

3. Affirmative marketing agreements. Any property owner applying for rental rehabilitation funds from a grantee must submit to such grantee a description of its proposed affirmative marketing procedures which must conform with the grantee's affirmative marketing plan. This description must be in a form prescribed by the grantee, and must include the form(s) of advertising and community contacts to be used by the owner or the owner's managing agent in publicizing all vacancies, except for units rented to families receiving Section 8 certificates or vouchers, in order to attract the group(s) identified by the grantee as being least likely to apply.

Upon approval of proposed efforts, owners must enter into a compliance agreement with the grantee which must include:

a. An agreement to comply with federal, state and local fair housing law;

b. An agreement to carry out specified affirmative marketing procedures;

c. An agreement to maintain records on the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, records on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following

completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting affirmative marketing efforts in a form specified by the grantee;

d. An agreement to report such information to the grantee on an annual basis; and

e. Sanctions to be imposed by the grantee in the event of noncompliance by the property owner.

Such agreement must be effective for a period of seven years beginning on the date on which the rehabilitation of the units in the projects is completed.

4. Grantee requirements. Each grantee shall be responsible for:

a. Informing property owners' staff and owners' managing agents of their responsibility to comply with federal, state and local fair housing laws;

b. Informing property owners of the affirmative marketing requirements of the Virginia Rental Rehabilitation Program, as well as the provisions of the grantee's affirmative marketing plan;

c. Reviewing and approving affirmative marketing procedures proposed by property owners;

d. Entering into legally binding affirmative marketing agreements with property owners;

e. Monitoring compliance by property owners with affirmative marketing agreements and imposing prescribed sanctions as necessary; and

f. Collecting, and reporting to the authority on an annual basis, information regarding the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, information on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting property owner compliance with affirmative marketing requirements (e.g., records of all advertisements, notices and marketing information).

J. Use of minority and women's business enterprises. Each grantee must encourage the use of minority and women's business enterprises in connection with activities funded with rental rehabilitation grant monies in accordance with ~~24 CFR 511.10(m)(1)(v)~~ *24 CFR 511.13* . Such efforts must include the following activities.

1. Targets. Upon entering into a grant agreement with the authority, each grantee must establish local dollar or other measurable targets based on factors that the grantee regards as appropriate and related to the purpose of its rental rehabilitation program. A copy of such targets must be forwarded to the authority prior to the drawing down of any grant funds.

2. List of businesses. Upon entering into a grant agreement with the authority, each grantee must prepare a list of minority and women's business enterprises which are potential suppliers or rehabilitation services and materials to property owners receiving grant assistance. A grantee should make use of the services of the Virginia Office of Minority Business Enterprise and appropriate federal agencies, as needed, in preparing such a list. Each grantee must forward a copy of the list to the authority prior to drawing down any grant funds.

3. Bid solicitation. Each grantee must make reasonable efforts to include qualified minority and women's business enterprises on bid solicitation lists and to ensure that such businesses are solicited whenever they are potential sources of services and materials.

4. Negotiated contracts. Whenever competitive bidding is not required of a property owner, the grantee must provide the property owner with a list of minority and women's business enterprises which are potential sources of services or materials.

5. Subcontracts. Each grantee must ensure that property owners require that all subcontractors be provided with a list of minority and women's business which are potential suppliers of materials or services.

6. Records. Each grantee must keep records of the number and dollar amount of participation by minority and women's business enterprises, including subcontractors and owners of rental properties, in connection with activities funded with rental rehabilitation grant monies.

K. Use of local area and minority contractors, suppliers and employees.

Each grantee must encourage the use of local area and minority contractors, suppliers and employees in connection with activities funded with rental rehabilitation grant monies in accordance with ~~24 CFR 511.10(m)(1)(v)~~ *24 CFR 511.13* . Such activities must include the development of a plan that includes the following elements:

1. Area definition. The plan must include a definition of the local area in which residents and businesses are the intended beneficiaries of rental rehabilitation

activities (usually the applicant locality or, in the case of a town or small city, the locality plus the adjacent county).

2. Procedures. The plan must include procedures to be followed to encourage the use of local area and minority contractors, suppliers and employees in connection with activities funded with rental rehabilitation grant monies.

A copy of this plan (such federally required plans are often referred to as "Section 3 Plans") must be forwarded to the authority prior to the drawing down of any grant funds.

L. Architectural barriers to the handicapped.

Each grantee must ensure that, in the case of projects involving the rehabilitation of 25 or more units where the cost of rehabilitation is greater than or equal to 75% of the value of the project after rehabilitation, the owner improves any unit occupied by a handicapped person prior to rehabilitation in a manner which removes architectural barriers in accordance with the requirements of ~~24 CFR 511.10(m)(1)(ii)~~ *24 CFR 511.16(c)* .

M. Age discrimination in employment.

Each grantee must ensure that property owners do not discriminate against employees based on age, nor that property owners use contractors who so discriminate, in accordance with ~~24 CFR 511.10(m)(1)(ii)~~ *24 CFR 511.13(a)(2)* .

N. Labor standards.

Each grantee must ensure that all laborers and mechanics, except laborers and mechanics employed by a local government acting as the principal contractor on the project, employed in the rehabilitation of a project receiving rental rehabilitation grant assistance that contains 12 or more units, are paid at the prevailing wage rates set under the Davis Bacon Act, 40 USC 276a, and that contracts involving their employment are subject to the provisions of the Contract Work Hours and Safety Standards Act, 40 USC 327, in accordance with the requirements of ~~24 CFR 511.11(a)~~ *24 CFR 511.16(a)* .

O. Environmental and historic reviews.

Each grantee must comply with the environmental and historic review requirements contained in 24 CFR Part 58. Grantees must submit requests for release of funds to the authority for review. VHDA will forward its recommendation, together with the request, the environmental certification and the objections, to HUD. All approvals for release of funds will be made by HUD.

P. Conflicts of interest.

Each grantee must comply with the conflict of interest requirements contained in ~~24 CFR 511.11(c)~~ *24 CFR 511.12* .

Q. Lead-based paint.

Each grantee must ensure that any property owner receiving rental rehabilitation grant assistance takes steps to remove the hazards of lead-based paint in accordance with the requirements of 24 CFR Part 35.

R. Use of debarred, suspended or ineligible contractors.

Each grantee must comply with the requirements of 24 CFR Part 24 in the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors with rental rehabilitation grant funds.

S. Legal agreement with property owner.

Each grantee must execute an agreement with the owner of a property receiving rental rehabilitation assistance, including a cooperative or mutual housing association, under which the owner:

1. Agrees, for a period of at least 10 years beginning on the date on which the rehabilitation of the units in the project is completed, not to:

a. Discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any federal, state or local housing assistance program;

b. Discriminate against prospective tenants on the basis that the tenants have a minor child or children who will be residing with them, except for housing projects for elderly persons; and

c. Convert the units to condominium ownership or any form of ineligible cooperative ownership.

2. Agrees, for a period of ~~seven~~ *10* years beginning on the date on which the rehabilitation of the units in the project is completed, to:

a. Comply with federal, state or local fair housing laws;

b. Carry out specified affirmative marketing procedures; and

c. Maintain records on the racial/ethnic and gender characteristics of tenants occupying units before and after rehabilitation, records on tenants moving from and (initially after rehabilitation) into rehabilitated units, records on applications for tenancy within 90 days following completion of rehabilitation, data on the race and ethnicity of displaced households and, if available, the address of the housing units to which each displaced household relocated, and information documenting affirmative marketing

efforts in a form specified by the grantee, and to report such information to the grantee on an annual basis (see § 5 I 3).

Such agreement must contain sanctions to be imposed by the grantee in the event of noncompliance by the property owner. Guidelines are contained in ~~24 CFR 511.10(i) and (j)~~ *24 CFR 511.11(d)(1)(ii) and (iii)* .

§ 6. Grant administration.

A. Responsibility for grant administration.

Grantees are responsible for ensuring that rental rehabilitation grants are administered in accordance with the requirements of these rules and regulations , all applicable sections of 24 CFR Part 511 and other applicable state and federal laws.

B. Records to be maintained.

Each grantee must maintain records specified by the authority that clearly document its performance under each requirement of these rules and regulations. Required records must be retained for a period of three years from the date of final close-out of the rental rehabilitation grant. Public disclosure of records and documents must comply with the requirements of ~~24 CFR 511.72~~ *24 CFR 511.73(c)* .

C. Grant management and audit.

Each grantee must comply with the policies, guidelines and requirements of 24 CFR 511.11(c) in the acceptance and use of rental rehabilitation grant funds. Access to grantee records and files must be provided in accordance with the requirements of ~~24 CFR 511.73~~ *24 CFR 511.74* . The financial management systems used by grantees must conform to the requirements of ~~24 CFR 511.74~~ *24 CFR 511.75* .

D. Disbursement of funds/cash management systems.

Grant monies will be disbursed to grantees for payment of eligible program costs in accordance with the following procedures:

1. Project accounts. Grantees must identify to the authority each project for which they wish to provide rental rehabilitation funds and the amount of grant monies to be committed to each project. Upon receipt of all necessary project information, the authority will establish a project account with HUD.

2. Disbursement of funds. Grant monies will be disbursed on a project-by-project basis by electronic funds transfer to a designated depository institution in accordance with HUD procedures and guidelines. The authority will designate a depository institution and make all requests to HUD for funds transfer, unless such authority is formally delegated to a grantee by the authority. Grantees will notify the authority of the need for grant funds to pay eligible rehabilitation costs. the authority will in turn request HUD to transfer funds to the authority. Upon receipt of such monies, the authority will disburse grant funds to the grantee or, at the authority's option, the authority may, prior to receiving the grant funds requested from HUD, disburse to the grantee its own funds in an amount equal to such requested grant funds and reimburse itself with the HUD funds upon receipt thereof.

3. Conditions for requesting draw-downs of funds. Grantees must not request draw-downs of funds until such funds are actually needed for payment of eligible costs. A request for funds for payment of a contractor may only be made after the work has been inspected and found to be satisfactory. Grant funds must be drawn down at no greater proportion than the amount of rental rehabilitation funds in the project. For example, if on a $10,000 rehabilitation project, $5,000 of rental rehabilitation grant funds were provided and the construction was 50% complete, no more than $2,500 in rental rehabilitation grant funds could be drawn down for the project. Disbursement of any grant funds is conditioned on the submission of satisfactory information by the grantee about the project and compliance with other procedures established by the authority and HUD.

§ 7. Allocation and administration of § 8 certificates and vouchers.

A. Allocation of rental assistance.

~~Subject to the availability (as determined by HUD) of contract and budget authority for certificates or vouchers under Section 8, the Authority will assign contract authority for up to one voucher or certificate for use in the Virginia Rental Rehabilitation Program for each $5,000 of rental rehabilitation grant monies allocated to a grantee. Such rental assistance must be used in accordance with 24 CFR 511.41(a) and other governing HUD rules, regulations, procedures and requirements.~~

Annually the authority will determine how many housing vouchers or certificates will be needed for in-place tenants who will require assistance for the next calendar year based upon an assessment of all pending rental rehabilitation program projects. This information along with an estimate of the grantee's turnover will be used to determine the minimum allocation of housing vouchers and certificates to be made to grantees under the VHDA Section 8 rental assistance program. The authority will then allocate at least the minimum allocation of housing vouchers and certificates to the grantees pending their availability from HUD. Those grantees who participate directly with HUD in the Section 8 program will receive their housing vouchers and certificates directly from HUD.

B. Administration of rental assistance.

The authority will enter into Annual Contributions Contracts with HUD to administer contract authority for Section 8 certificates or vouchers allocated to Virginia for use in the Virginia Rental Rehabilitation Program. The authority will administer such contract authority in accordance with the applicable rules and regulations of the authority .

§ 8. Annual performance review.

A. Performance elements.

The authority uwill review the performance of all grantees in carrying out their responsibilities under these rules and regulations and under all the applicable requirements of 24 CFR Part 511 at least ~~annually~~ *every two years* . These reviews will analyze whether the grantee has:

1. Carried out its activities in a timely manner, including the commitment of rental rehabilitation grant funds to specific projects;

2. Has carried out its activities in accordance with all state and federal requirements; and

3. Has a continuing capacity to carry out its activities in a timely manner.

B. Grantee reports to the authority.

Each grantee must submit the following reports to the authority at such times and such formats as the authority may prescribe:

1. Management reports. Each grantee must submit reports to the authority on the management of its rental rehabilitation grant as requested by the authority.

2. Annual performance report. Each grantee must submit an annual performance report to the authority at such times as the authority may prescribe. This report must contain such information and be in such form as prescribed by the authority, and will include at least the elements prescribed in 24 CFR 511.81(2).

C. Remedial actions and sanctions.

In the event of failure by a grantee to carry out its responsibilities in administering its rental rehabilitation grant, the authority will seek remedial actions on the part of the grantee and, if necessary, impose sanctions including the recapture of uncommitted rental rehabilitation grant funds and barring the local government from future participation in the Virginia Rental Rehabilitation Program.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **State Plan for Medical Assistance Relating to Coordination of Title XIX with Part A and Part B of Title XVIII.**
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.

Public Hearing Date: N/A – Written comments may be submitted until September 13, 1991.
(See Calendar of Events section for additional information)

Summary:

The purpose of this proposal is to promulgate permanent regulations, which are needed to supersede the current emergency regulations, that limit the payment of the coinsurance amount by Medicaid, if Medicaid makes any payment, so that the combined payments of Medicare Part B and Medicaid would not exceed the Medicaid allowance for a particular procedure.

This proposed regulation affects three preprinted pages in the State Plan for Medical Assistance, as well as Attachments 3.2 A (Coordination of Title XIX with Part A and Part B of Title XVIII; 4.19 B, Methods and Standards for Establishing Payment Rates - Other Than Types of Care); and 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates - Other Types of Care.

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.

The regulatory action promulgates the permanent rules needed to implement this policy.

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. /XX/ 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	DEDUCTIBLES/COINSURANCE
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 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 plan *except Qualified Disabled Working Individuals* .

4. ☒ Qualified Medicare Beneficiaries provided by § 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 § 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.

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. Fee-for-service providers.

(1) 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:

(a) Physicians' services (Supplement 1 has obstetric/pediatric fees.)

(b) Dentists' services

(c) Mental health services including:

Community mental health services

Services of a licensed clinical psychologist

Mental health services provided by a physician

(d) Podiatry

(e) Nurse-midwife services

(f) Durable medical equipment

(g) Local health services

(h) Laboratory services (Other than inpatient hospital)

(i) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

(j) X-Ray services

(k) Optometry services

(l) Medical supplies and equipment.

(2) Hospice services payment must be no lower than the amounts using the same methodology used under part A of Title XVIII, and adjusted to disregard offsets attributable to Medicare coinsurance amounts.

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.

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

(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. *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 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 460-03-4.1922. 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 copayment, 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*
	☒ full amount	☒ full amount	☒ full amount
Part A Coinsurance	☐ limited to State plan rates*	☐ limited to State plan rates*	☐ limited to State plan rates*
	☒ full amount	☒ full amount	☒ full amount
Part B Deductible	☐ limited to State plan rates*	☐ limited to State plan rates*	☐ limited to State plan rates*
	☒ full amount	☒ full amount	☒ full amount
Part B Coinsurance	☒ limited to State plan rates*	☒ limited to State plan rates*	☒ 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.*

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Title of Regulation: **State Plan for Medical Assistance Relating to Home Health Services.**
VR 460-03-3.1100. Amount, Duration and Scope of Services.
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.

Public Hearing Date: N/A – Written comments may be submitted until September 13, 1991.
(See Calendar of Events section for additional information)

Summary:

The purpose of this proposal is to promulgate permanent regulations providing for the authorization and utilization review (UR) of home health services to supersede the current emergency regulations which became effective January 1, 1991.

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). The Durable Medical Equipment (DME) and Supplies Listing that was placed in Supplement 4 of Attachment 3.1 A & B of the emergency regulation has been removed from the proposed regulation at the request of the Health Care Financing Administration. The DME listing is found in the provider manuals for rehabilitative services, DME, home health, and local health departments and will be periodically updated. In addition, the proposed regulations are more specific regarding noncovered items than the emergency regulations.

Home health services are provided by certified home health agencies on a part-time or intermittent basis to home-bound 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 provider enrollment. 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.

Predetermined limits, based upon the Health Care Financing Administration Common Procedure Coding System (HCPCS), have been determined for durable medical equipment and supplies. If extended use of the equipment and/or supplies is required, then the provider must request additional equipment or supplies from DMAS. Payment will 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 is a 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 is a visit to perform or teach a specific task and/or monitor compliance

(3) intensive/extended visit is a 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 is a visit to conduct a comprehensive assessment of patient's rehabilitative needs and to develop a rehabilitative plan of care

(2) routine follow-up visit is a 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.

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.

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. *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 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 ~~medical~~ *medically necessary* 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 policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.*

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~~ *authorized by the agency .*

3. Supplies, equipment, or appliances that are not covered include, but are not limited to, the following:

a. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners.

b. Durable medical equipment and supplies for any hospital or nursing facility resident, except ventilators and associated supplies for nursing facility residents that have been approved by DMAS central office.

c. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales).

d. Items that are only for the recipient's comfort and convenience or for the convenience of those caring for the recipient (e.g., a hospital bed or mattress because the recipient does not have a decent bed; wheelchair trays used as a desk surface; mobility items used in addition to primary assistive mobility aide for caregiver's or recipient's convenience (i.e., electric wheelchair plus a manual chair); cleansing wipes.

e. Prosthesis, except for artificial arms, legs, and their supportive devices which must be preauthorized by the DMAS central office (effective July 1, 1989).

f. 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, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs.

g. Orthotics, including braces, splints, and supports.

h. Home or vehicle modifications.

i. Items not suitable for or used primarily in the home setting (i.e., car seats, equipment to be used while at school, etc.).

j. Equipment that the primary function is vocationally or educationally related (i.e., computers, environmental control devices, speech devices, etc.).

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.

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 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 home's operating cost.

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 service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective August 2, 1990, the Program will not provide direct reimbursement to enrolled providers for occupational therapy 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 home's operating cost.

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).

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.

B. Effective August 2, 1990, the Program will not provide direct reimbursement to enrolled providers for speech therapy 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 home's operating cost.

§ 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 ervices 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).

A. Covered hospice services shall be defined as those services allowed under the provisions of Medicare law and regulations as they relate to hospice benefits and as specified in the Code of Federal Regulations, Title 42, Part 418.

B. Categories of care.

As described for Medicare and applicable to Medicaid, hospice services shall entail the following four categories of daily care:

1. Routine home care is at-home care that is not continuous.

2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of 8 hours of care per day must be provided to qualify as continuous home care.

3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than 5 consecutive days.

4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself must provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).

2. Other services applicable for the terminal illness that must be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical supplies, and occupational and physical therapies and speech-language pathology services.

3. These other services may be arranged, such as by contractual agreement, or provided directly by the hospice.

4. To be covered, a certification that the individual is terminally ill must have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the

terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services must be consistent with the plan of care. 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 will be provided.

5. All services must be performed by appropriately qualified personnel, but it is the nature of the service, rather than the qualification of the person who provides it, that determines the coverage category of the service. The following services are covered hospice services:

a. Nursing care. 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 and who is licensed as a registered nurse.

b. Medical social services. Medical social services must be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

c. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his or her license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

e. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

f. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

g. Drugs and biologicals. Only drugs used which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

h. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

i. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

D. Eligible groups.

To be eligible for hospice coverage under Medicare or Medicaid, the recipient must have a life expectancy of six months or less, have knowledge of the illness and life expectancy, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician and the hospice medical director must certify the life expectancy. The hospice must obtain the certification that an individual is terminally ill in accordance with the following procedures:

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement signed by the medical director of the hospice or the physician member of the hospice interdisciplinary group and the individual's attending physician if the individual has an attending physician. For the initial 90-day period, if the hospice cannot obtain written certifications within two calendar days, it must obtain oral certifications within two calendar days, and written certifications no later than eight calendar days after the period begins.

2. For any subsequent 90-day or 30-day period or a

subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

§ 19. Case management services for high-risk pregnant women and children up to age 1, as defined in Supplement 2 to Attachment 3.1-A in accordance with § 1915(g)(1) of the Act.

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

20a. Pregnancy-related and postpartum services for 60 days after the pregnancy ends.

The same limitations on all covered services apply to this group as to all other recipient groups.

20b. Services for any other medical conditions that may complicate pregnancy.

The same limitations on all covered services apply to this group as to all other recipient groups.

§ 21. Any other medical care and any other type of remedial care recognized under state law, specified by the Secretary of Health and Human Services.

21a. Transportation.

Nonemergency transportation is administered by local health department jurisdictions in accordance with reimbursement procedures established by the Program.

21b. Services of Christian Science nurses.

Not provided.

21c. Care and services provided in Christian Science 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.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

The following is a description of the standards and the methods that will be used to assure that the medical and remedial care and services are of high quality:

§ 1. Institutional care will be provided by facilities qualified to participate in Title XVIII and/or Title XIX.

§ 2. Utilization control.

A. Hospitals.

1. The Commonwealth of Virginia is required by state law to take affirmative action on all hospital stays that approach 15 days. It is a requirement that the hospitals submit to the Department of Medical

Assistance Services complete information on all hospital stays where there is a need to exceed 15 days. The various documents which are submitted are reviewed by professional program staff, including a physician who determines if additional hospitalization is indicated. This review not only serves as a mechanism for approving additional days, but allows physicians on the Department of Medical Assistance Services' staff to evaluate patient documents and give the Program an insight into the quality of care by individual patient. In addition, hospital representatives of the Medical Assistance Program visit hospitals, review the minutes of the Utilization Review Committee, discuss patient care, and discharge planning.

2. In each case for which payment for inpatient hospital services, or inpatient mental hospital services is made under the State Plan:

a. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care.

b. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.

c. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. Long-stay acute care hospitals (nonmental hospitals).

1. Services for adults in long-stay acute care hospitals. The population to be served includes individuals requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, comprehensive rehabilitative therapy services and individuals with communicable diseases requiring universal or respiratory precautions.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

b. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

c. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

d. In addition, the individual must meet at least one of the following requirements:

(1) Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, five days per week, for a minimum of one hour each day; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by a licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy; or

(3) The individual must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(c) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(f) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

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 individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

f. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

2. Services to pediatric/adolescent patients in long-stay acute care hospitals. The population to be served shall include children requiring mechanical ventilation, ongoing intravenous medication or nutrition administration, daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), comprehensive rehabilitative therapy services, and those children having communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.) and with terminal illnesses.

a. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

b. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.

c. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

d. In addition, the child must meet one of the following requirements:

(1) Must require two out of three of the following physical rehabilitative services: physical therapy, occupational therapy, speech-pathology services; each required therapy must be provided daily, fivedays per week, for a minimum of 45 minutes per day; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

(2) Must require special equipment such as mechanical ventilators, respiratory therapy equipment (that has to be supervised by licensed nurse or respiratory therapist), monitoring device (respiratory or cardiac), kinetic therapy, etc; or

(3) Must require at least one of the following special services:

(a) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(c) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) Ostomy care requiring services by a licensed nurse;

(g) Services required for terminal care.

e. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. 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.

g. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

C. Nursing facilities.

1. As required by federal law, the Department of Medical Assistance Services visits every Medicaid patient that is residing in a nursing home in Virginia. The purpose of the visit is to conduct a complete medical and social evaluation of the patient. The visit also includes patient interviews and discussions with the professional staff and the attending physician. Thus, it is assured that quality care is rendered to these recipients and that the patient is receiving the proper level of care.

2. Long term care of patients in medical institutions will be provided in accordance with procedures and practices that are based on the patient's medical and social needs and requirements.

3. In each case for which payment for nursing facility services is made under the State Plan:

a. A physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires the nursing facility level of care. The Nursing Home Preadmission Screening shall serve as the admission or initial certification for nursing home care if the date of the screening occurred within 30 days prior to the admission;

b. The physician, or nurse practitioner or clinical nurse specialist, who is not an employee of the facility but is working in collaboration with a physician, must recertify the need for skilled or intermediate level of care. Recertifications must be written according to the following schedule:

(1) Skilled Nursing Facility Services - at least:

30 days after the date of the initial certification,

60 days after the date of the initial certification,

90 days after the date of the initial certification, and

every 60 days thereafter;

(2) Intermediate Nursing Home Care - at least:

60 days after the date of the initial certification,

180 days after the date of the initial certification,

12 months after the date of the initial certification,

18 months after the date of the initial certification,

24 months after the date of the initial certification, and

every 12 months thereafter;

(3) Intermediate Care Facilities for the Mentally Retarded - at least every 365 days;

c. For the purpose of determining compliance with the schedule established by paragraph b, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required, if the physician, or other person making such recertification, provides a written statement showing good cause why such recertification did not meet such schedule;

d. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but who is working in collaboration with a physician for skilled or intermediate care services ;

e. The schedule of recertifications set forth in paragraph b shall become effective for all admissions and recertifications due on or after October 1, 1984, except that this amendment made by this section shall not require recertifications sooner or more frequently than every 60 days for skilled care patients admitted before October 1, 1984;

f. The addition of the nurse practitioner or clinical nurse specialist, as qualified in paragraphs a, b, and d, shall apply to certifications, recertifications, and plans of care for skilled or intermediate care written on or after July 1, 1988, and before October 1, 1990;

g. The Department of Medical Assistance Services will recover payments made for periods of care in which the certifications, recertifications, and plans of care documentation does not meet the time schedule of this section to the extent required by federal law.

h. In addition, a fiscal penalty of 1-1/2% per month of the disallowed payment will be assessed against the nursing home from the time the noncertified service was rendered until payment is received by the Virginia Medical Assistance Program (§ 32.1-313 of the Code of Virginia). No efforts by the nursing home shall be exerted to recoup this penalty from the patient or responsible party.

D. 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 subdivision 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, or

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, and

(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, 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.

E. 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).

* * *

PART I.
ADMISSION CRITERIA FOR REHABILITATIVE SERVICES.

§ 1.1. A patient qualifies for intensive inpatient or outpatient rehabilitation if:

A. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of a multi-disciplinary coordinated team approach to upgrade 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 shall 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.

PART II.
INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. Within 72 hours of a patient's admission to an inpatient 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 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 reques ted 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.

PART III.
DOCUMENTATION REQUIREMENTS.

§ 3.1. Documentation of rehabilitation services shall, 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 coordinated 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 will be provided.

PART IV.
INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for rehabilitation for which an outpatient assessment cannot be adequately performed, an inpatient evaluation of no more than seven 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 now 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 educational purposes or for developmental or behavioral assessments are not covered services.

PART V.
CONTINUING EVALUATION.

§ 5.1. Team conferences shall be held 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.

PART VI.
THERAPEUTIC FURLOUGH DAYS.

§ 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.

PART VII.
DISCHARGE PLANNING.

§ 7.1. Discharge planning shall 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 responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.

PART VIII.
REHABILITATION SERVICES TO PATIENTS.

§ 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 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 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 qualified 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 a qualified 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.

1. 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 with accepted 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 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.

PART IX.
HOSPICE SERVICES.

§ 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. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§ 9.2. Utilization review.

Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 9.3. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain

and symptom control. The rules pertaining to them are:

1. Nursing care. 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 and who is licensed as a registered nurse.

2. Medical social services. Medical social services must be provided by a social worker who has at least a bachelor's degree from a school accredited or approved by the Council on Social Work Education, and who is working under the direction of a physician.

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

4. Counseling services. Counseling services must be provided to the terminally ill individual and the family members or other persons caring for the individual at home. Counseling, including dietary counseling, may be provided both for the purpose of training the individual's family or other caregiver to provide care, and for the purpose of helping the individual and those caring for him to adjust to the individual's approaching death. Bereavement counseling consists of counseling services provided to the individual's family up to one year after the individual's death. Bereavement counseling is a required hospice service, but it is not reimbursable.

5. Short-term inpatient care. Short-term inpatient care may be provided in a participating hospice inpatient unit, or a participating hospital or nursing facility. General inpatient care may be required for procedures necessary for pain control or acute or chronic symptom management which cannot be provided in other settings. Inpatient care may also be furnished to provide respite for the individual's family or other persons caring for the individual at home.

6. Durable medical equipment and supplies. Durable medical equipment as well as other self-help and personal comfort items related to the palliation or management of the patient's terminal illness is covered. Medical supplies include those that are part of the written plan of care.

7. Drugs and biologicals. Only drugs which are used primarily for the relief of pain and symptom control related to the individual's terminal illness are covered.

8. Home health aide and homemaker services. Home health aides providing services to hospice recipients must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aides may provide personal care services. Aides may also perform household services to maintain a safe and sanitary environment in areas of the home used by the patient, such as changing the bed or light cleaning and laundering essential to the comfort and cleanliness of the patient. Homemaker services may include assistance in personal care, maintenance of a safe and healthy environment and services to enable the individual to carry out the plan of care. Home health aide and homemaker services must be provided under the general supervision of a registered nurse.

9. Rehabilitation services. Rehabilitation services include physical and occupational therapies and speech-language pathology services that are used for purposes of symptom control or to enable the individual to maintain activities of daily living and basic functional skills.

VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Request for Home Health Authorization for Extended Services

SECTION I: Recipient Information

RECIPIENT:______ DATE OF BIRTH:______

ADDRESS:______

MEDICAID NO. ☐☐☐ ☐☐☐☐☐☐ ☐☐ ☐ MEDICARE NO. ☐☐☐ ☐☐ ☐☐☐☐ ☐

SOCIAL SECURITY NO. ☐☐☐ ☐☐ ☐☐☐☐ OTHER INSURANCE:______

SECTION II: Provider Information DATE OF REQUEST:______

AGENCY:______ PROVIDER NO.:______

ADDRESS:______ PHONE NO.:(   )______

CONTACT PERSON & TITLE:______

SECTION III: Request for Extended Services

Discipline	Visits Requested/ Dates of Services	Justification	SECTION IV: DMAS USE ONLY	
Nursing	# visits:_____ dates: _/_/_ to _/_/_		Approved___ Denied___ Pending___	COMMENTS
Home Health Aide	# visits:_____ dates: _/_/_ to _/_/_		Approved___ Denied___ Pending___	
Physical Therapy	# visits:_____ dates: _/_/_ to _/_/_		Approved___ Denied___ Pending___	
Occupational Therapy	# visits:_____ dates: _/_/_ to _/_/_		Approved___ Denied___ Pending___	
Speech-Language Pathology	# visits:_____ dates: _/_/_ to _/_/_		Approved___ Denied___ Pending___	URA Signature
	# visits:_____ dates: _/_/_ to _/_/_		Approved___ Denied___ Pending___	Date

THE CURRENT RECOMMENDED HOME HEALTH PLAN OF CARE (HCFA 485, 486, AND 487) MUST BE ATTACHED TO THIS REQUEST.

Send completed form to: Department of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, VA 23219
ATTENTION: Home Health Services - Long Term Care Section

DMAS-350

Health Care Financing Administration

HOME HEALTH CERTIFICATION AND PLAN OF TREATMENT

1. Patient's HI Claim No. | 2. SOC Date | 3. Certification Period From: To: | 4. Medical Record No. | 5. Provider No.

6. Patient's Name and Address | 7. Provider's Name and Address.

8. Date of Birth: | 9. Sex ☐ M ☐ F | 10. Medications: Dose/Frequency/Route (N)ew (C)hanged

11. ICD-9-CM | Principal Diagnosis | Date

12. ICD-9-CM | Surgical Procedure | Date

13. ICD-9-CM | Other Pertinent Diagnoses | Date

14. DME and Supplies | 15. Safety Measures:

16. Nutritional Req. | 17. Allergies:

18.A. Functional Limitations

1 ☐ Amputation 5 ☐ Paralysis 9 ☐ Legally Blind
2 ☐ Bowel/Bladder (Incontinence) 6 ☐ Endurance A ☐ Dyspnea With Minimal Exertion
3 ☐ Contracture 7 ☐ Ambulation B ☐ Other (Specify)
4 ☐ Hearing 8 ☐ Speech

18.B. Activities Permitted

1 ☐ Complete Bedrest 6 ☐ Partial Weight Bearing A ☐ Wheelchair
2 ☐ Bedrest BRP 7 ☐ Independent At Home B ☐ Walker
3 ☐ Up As Tolerated 8 ☐ Crutches C ☐ No Restrictions
4 ☐ Transfer Bed/Chair 9 ☐ Cane D ☐ Other (Specify)
5 ☐ Exercises Prescribed

19. Mental Status: 1 ☐ Oriented 3 ☐ Forgetful 5 ☐ Disoriented 7 ☐ Agitated
2 ☐ Comatose 4 ☐ Depressed 6 ☐ Lethargic 8 ☐ Other

20. Prognosis: 1 ☐ Poor 2 ☐ Guarded 3 ☐ Fair 4 ☐ Good 5 ☐ Excellent

21. Orders for Discipline and Treatments (Specify Amount/Frequency/Duration)

22. Goals/Rehabilitation Potential/Discharge Plans

23. [illegible]

24. [illegible] | 25. [illegible] | 26. [illegible]

27. [illegible] | Date Signed

Department of Health and Human Services
Health Care Financing Administration

MEDICAL UPDATE AND PATIENT INFORMATION

1. Patient's HI Claim No.	2. SOC Date	3. Certification Period From: To:	4. Medical Record No.	5. Provider No.

6. Patient's Name	7. Provider's Name

8. Medicare Covered: ☐ Y ☐ N   9. Date Physician Last Saw Patient: 10. Date Last Contacted Physician

11. Is the Patient Receiving Care in an 1861 (J)(1) Skilled Nursing Facility or Equivalent? ☐ Y ☐ N ☐ Do Not Know   12. ☐ Certification ☐ Recertification ☐ Modified

13. Specific Services and Treatments

Discipline	Visits (This Bill) Rel. to Prior Cert.	Frequency and Duration	Treatment Codes	Total Visits Projected This Cert.

14. Dates of Last Inpatient Stay: Admission   Discharge   15. Type of Facility

16. Updated Information: New Orders/Treatments/Clinical Facts/Summary from Each Discipline

17. Functional Limitations (Expand From 485 and Level of ADL) Reason Homebound/Prior Functional Status

Department of Health and Human Services
Health Care Financing Administration

ADDENDUM TO: ☐ PLAN OF TREATMENT ☐ MEDICAL UPDATE

1. Patient's HI Claim No.	2. SOC Date	3. Certification Period From: To:	4. Medical Record No.	5. Provider No.

6. Patient's Name	7. Provider Name

8. Item No.	

BOARD OF MEDICINE

Title of Regulation: **VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases, Including Abnormal Conditions, of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.**

Statutory Authority: §§ 54.1-2400, 54.1-2957.1, 54.1-2957.2 and 54.1-2957.3 of the Code of Virginia.

Public Hearing Date: N/A -- Written comments may be submitted until September 13, 1991.
(See Calendar of Events section for additional information)

Summary:

These regulations prescribe the standards for the certification of optometrists to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents to assure delivery of appropriate eye care to the citizens in the Commonwealth of Virginia.

VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases, Including Abnormal Conditions, of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Approved school" means those optometric and medical schools, colleges, departments of universities or colleges or schools of optometry or medicine currently accredited by the Council on Postsecondary Accreditation or by the United States Department of Education.

"Board" means the Virginia Board of Medicine.

"Certification" means the Virginia Board of Medicine certifying an optometrist to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa and administer certain therapeutic pharmaceutical agents.

"Certified optometrist" means an optometrist who holds a current license to practice optometry in the Commonwealth of Virginia, is certified to use diagnostic pharmaceutical agents by the Virginia Board of Optometry, and has met all of the requirements established by the Virginia Board of Medicine to treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

"Examination" means an examination approved by the Board of Medicine for certification of an optometrist to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

"Invasive modality" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive modalities include surgery, lasers, ionizing radiation, therapeutic ultrasound, medication administered by injection, and the removal of foreign bodies from within the tissues of the eye. For purposes of these regulations, the administration of a topical agent specified in § 4.3 of these regulations is not considered an invasive modality.

"Postgraduate clinical training" means a postgraduate program approved by the board to be eligible for certification.

"Protocol" means a prescribed course of action developed by the certified optometrist which defines the procedures for responding to any patient's adverse reaction or emergency.

§ 1.2. Public Participation Guidelines.

Separate Board of Medicine regulations, VR 465-01-01, entitled Public Participation Guidelines, which provide for involvement of the public in the development of all regulations of the Virginia Board of Medicine, are incorporated by reference in these regulations.

PART II.
APPLICATION FOR CERTIFICATION EXAMINATION.

§ 2.1. Application for certification by examination.

An applicant for certification by examination shall be made on forms provided by the board. Such application shall include the following information and documents:

1. A complete application form;

2. The fee specified in § 7.1 of these regulations to be paid at the time of filing the application;

3. Additional documents required to be filed with the application are:

a. A letter from the Virginia Board of Optometry certifying that:

(1) The applicant holds a current license to practice optometry in Virginia, and

(2) The applicant is certified to use diagnostic pharmaceutical agents;

b. Documented evidence that the applicant has been certified to administer cardiopulmonary resuscitation (CPR);

c. Documented evidence of satisfactory completion of the postgraduate *optometric* training approved and prescribed by the board *or documentation of graduate optometric training equivalent to the postgraduate optometric training required by the board;*

d. Verification of licensure status in other states from the Board of Examiners in Optometry or appropriate regulatory board or agency.

PART III.
EXAMINATION.

§ 3.1. Examination for certification.

The following general provisions shall apply to optometrists who apply to take the board's examination for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

A. The certification examination for an optometrist to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall be in two parts, pharmaceutical and clinical, and shall be taken as a unit.

B. A candidate for certification by the board who fails the examination following three attempts shall take additional postgraduate training approved by the board to be eligible to take further examinations, as required in § 6.1.

PART IV.
SCOPE OF PRACTICE FOR AN OPTOMETRIST CERTIFIED TO USE THERAPEUTIC DRUGS.

§ 4.1. Certification.

An optometrist, currently licensed by the Board of Optometry, who has completed didactic and clinical training to ensure an appropriate standard of medical care for the patient and has met all other requirements and has passed an examination administered by the board, shall be certified to administer and prescribe certain therapeutic pharmaceutical agents in the treatment of certain diseases, including abnormal conditions, of the human eye and its adnexa.

§ 4.2. Diseases and conditions which may be treated by an optometrist.

Diseases and conditions which may be treated by an optometrist certified by the board are hordeolum, conjunctivitis, blepharitis, chalazion, dry eye, superficial conjunctival foreign bodies and noninfectious superficial epithelial damage secondary to contact lens wear provided that no corneal opacity is present.

§ 4.3. Therapeutic pharmaceutical agents.

Therapeutic pharmaceutical agents which a certified optometrist may administer and prescribe are all topical and are as follows:

1. Tetracycline

2. Erythromycin

3. Bacitracin

4. Polymyxin B/Bacitracin

5. Chlortetracycline

6. Sodium Sulfacetamide - 10%

7. Sodium Sulfacetamide - 15%

8. Sulfisoxazole - 4.0%

9. Sulfacetamide - 15% / Phenylephrine - ~~0.0125%~~ *0.125%*

10. Cromolyn Sodium - 4.0%

11. Naphazoline HCl - 0.1%

12. Phenylephrine HCl - 0.125% / Pheniramine Maleate - 0.5%

13. Phenylephrine HCl - 0.12% / Pyrilamine Maleate - 0.1% / Antipyrine - 0.1%

14. Naphazoline HCl - 0.025% / Pheniramine Maleate - 0.3%

15. Naphazoline HCl - 0.05% / Antazoline Phosphate - ~~0.05%~~ *0.5%*

16. Hydroxyproply Cellulose Ophthalmic Insert

§ 4.4. Standards of practice.

A. A certified optometrist after diagnosing and treating a patient who has a disease or condition as defined in § 4.2, which disease or condition failed to improve appropriately, usually within 72 hours, shall refer the patient to an ophthalmologist. A patient with a superficial corneal abrasion which does not improve significantly within 24 hours shall be referred to an ophthalomologist.

B. The certified optometrist shall establish a written protocol for the management of patient emergencies and referrals to physicians.

C. The treatment of certain diseases, including abnormal conditions, of the human eye and its adnexa with the administration of certain therapeutic pharmaceutical agents by certified optometrists is prohibited in children five years of age or younger.

PART V.
RENEWAL OF CERTIFICATION.

§ 5.1. Renewal of certification.

Every optometrist certified by the board shall renew his certification biennially on or before July 1 and pay the prescribed fee in § 7.1 in each odd number year.

§ 5.2. Renewal requirement.

Every optometrist certified by the board must submit proof of current certification to administer cardiopulmonary resuscitation (CPR) for renewal of certification.

§ 5.3. Expiration of certification.

An optometrist who allows his certification to expire shall be considered not certified by the board. An optometrist who proposes to resume the treatment of certain diseases, including abnormal conditions, of the human eye and its adnexa and administer certain therapeutic pharmaceutical agents shall make a new application for certification and pay a fee prescribed in § 7.1.

PART VI.
POSTGRADUATE TRAINING.

§ 6.1. Postgraduate training required.

Every applicant applying for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall be required to complete a full-time approved postgraduate *optometric* training program prescribed by the board *or to document that his graduate optometric program contained equivalent elements to the postgraduate optometric program approved by the board* .

A. The approved postgraduate program shall be the Ocular Therapy for the Optometric Practitioner #750B conducted by the Pennsylvania College of Optometry or any other postgraduate *optometric* program approved by the board.

B. Upon completing the required postgraduate *optometric* training program, the applicant may apply to sit for the certification examination administered by the board.

C. The certification examination shall be a two-part comprehensive examination in accordance with § 3.1 of these regulations.

D. An applicant shall be certified to administer cardiopulmonary resuscitation (CPR).

PART VII.
FEES.

§ 7.1. Fees required by the board.

A. Application fee for the examination to be certified to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall be $300. The examination fee is nonrefundable. Upon written request 21 days prior to the scheduled examination and payment of a $100 fee, an applicant may be rescheduled for the next administration of the examination.

B. The fee for biennial renewal of certification shall be $125.

C. The fee for reinstating an expired certification shall be $150.

D. The fee for a letter of good standing/verification to another state for a license shall be $10.

E. The fee for reinstatement of a revoked certificate shall be $750.

HRB-601
1/31/91
Optometry

INSTRUCTIONS FOR COMPLETING THE APPLICATION FOR CERTIFICATION BY EXAMINATION

These instructions provide for a Doctor of Optometry to prescribe for and treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents.

The Virginia Certification examination will be held on June 25, 1991 in Richmond, Virginia. The deadline date for receipt of the completed application is thirty (30) days prior to the date of the certification examination.

THE FEE for taking the certification examination is $300.00. The examination fee is non-refundable. The applicant may, upon written request twenty-one (21) days prior to the scheduled examination and payment of a $100.00 fee, be rescheduled for the next administration of the examination. The payment of the fee must be made payable to: *TREASURER OF VIRGINIA*.

NOTE: FEES SENT BEFORE THE RECEIPT OF AN APPLICATION WILL BE RETURNED. APPLICATIONS SENT WITHOUT THE FEE WILL BE RETURNED ALSO.

VERIFICATION OF VIRGINIA LICENSURE - Contact the Virginia Board of Optometry to request verification of licensure to practice and certification to use diagnostic pharmaceutical agents be provided to the Virginia Board of Medicine. The Board of Optometry number is (804) 662-9910.

CERTIFICATION OF CARDIOPULMONARY RESUSCITATION - Provide evidence of certification completed within the past two years to administer CPR. *PLEASE NOTE THAT YOUR SIGNATURE MUST BE ON THE CPR CERTIFICATION CARD.*

PROOF OF OPTOMETRIC TRAINING - Graduate Optometric Training or Postgraduate Optometric Training - Forward Form A to the graduate optometric or postgraduate training program for completion as directed. NOTE: SEE ATTACHED LIST OF APPROVED OPTOMETRIC TRAINING OR POSTGRADUATE OPTOMETRIC PROGRAMS. IF YOUR TRAINING PROGRAM IS NOT INCLUDED ON THIS LIST, PLEASE REQUEST THAT A COURSE STUDY OF THE TRAINING YOU RECEIVED BE ATTACHED TO FORM A.

LICENSURE IN OTHER STATES: Forward Form B to those states in which you have held or currently hold a license to practice Optometry. PLEASE NOTE THAT YOUR SIGNATURE MUST BE ON THE FRONT SIDE OF THE QUESTIONNAIRE. ONE QUESTIONNAIRE HAS BEEN ENCLOSED, AND YOU MAY DUPLICATE THIS FORM FOR YOUR CONVENIENCE.

Your application will be acknowledged upon receipt and you will be provided with a list of those documents which are outstanding.

The application will not be considered complete until all of the required information is received, and the application must be completed and approved to be eligible to sit for the certification examination.

Contact Person: Brenda H. Irvin, Certification Administrator
Virginia Board of Medicine
(804) 662-7664

GRADUATE OPTOMETRIC PROGRAMS APPROVED

School	Approved by Committee	Beginning Graduation Date Adopted for Approval in Lieu of of Postgraduate Training
University of Alabama at Birmingham	5-10-91	1983
Ferris State College College of Optometry	4-12-91	1987
University of Houston	6-03-91	1981
Illinois College of Optometry	5-10-91	1987
Indiana University	5-10-91	1984
University of Missouri - St. Louis	5-10-91	1988
The New England College of Optometry	5-10-91	1987
The Ohio State University College of Optometry	4-12-91	1981
Pacific University College of Optometry	4-12-91	1981
Pennsylvania College of Optometry	4-12-91	1987
Southern College of Optometry	4-12-91	1981

SCHOOLS.med

POSTGRADUATE OPTOMETRIC PROGRAMS APPROVED

School of Optometry	Program
The New England College of Optometry	Therapeutic Pharmaceutical Agents Program presented October 1988 - September 1990
University of Houston	Concentrated Ocular Therapeutic Course
Illinois College of Optometry	Therapeutic Approaches Course
University of Missouri - St. Louis	Clinical Ocular Therapy/100 Hour Course
Pennsylvania College of Optometry	Ocular Therapy for the Optometric Practitioner #7508
Southern California College of Optometry	Therapeutic Management of Ocular Conditions

POSTDOCTORAL RESIDENCYS OR FELLOWSHIPS

School	Approved by Committee	Beginning Date Adopted for Approval of Postdoctoral Residency or Fellowship Programs in Lieu of Postgraduate Training
Pennsylvania College of Optometry	5-10-91	1982

COURSES.med

DHP-035-070
Rev. 5/90

COMMONWEALTH of VIRGINIA

DEPARTMENT OF HEALTH PROFESSIONS
BOARD OF MEDICINE
1601 ROLLING HILLS DRIVE
RICHMOND, VA 23229-5005
(504) 662-9908

APPLICATION
TO PRACTICE AS A
CERTIFIED OPTOMETRIST

SECURELY PASTE
A PASSPORT SIZE
PHOTOGRAPH

TO THE BOARD OF MEDICINE OF VIRGINIA:

I HEREBY MAKE APPLICATION FOR A CERTIFICATE TO PRACTICE AS A CERTIFIED OPTOMETRIST IN THE COMMONWEALTH OF VIRGINIA AND SUBMIT THE FOLLOWING STATEMENTS:

1. NAME IN FULL (PLEASE PRINT OR TYPE)

(LAST)	(FIRST)	(MIDDLE/MAIDEN)	(JR./SR.)
(STREET)	(CITY)	(STATE)	(ZIP CODE)
(DATE OF BIRTH) MO DAY YR	(PLACE OF BIRTH)	(SOCIAL SECURITY NUMBER)	
(GRADUATION DATE) MO DAY YR	(PROF. SCH. DEGREE)	(SCHOOL, CITY, STATE)	

*PLEASE SUBMIT ADDRESS CHANGES IN WRITING IMMEDIATELY!

*PLEASE ATTACH CERTIFIED CHECK OR MONEY ORDER. APPLICATIONS WILL NOT BE PROCESSED WITHOUT THE APPROPRIATE FEE. DO NOT SUBMIT FEE WITHOUT AN APPLICATION. IT WILL BE RETURNED.

APPLICANTS DO NOT USE SPACES BELOW THIS LINE — FOR OFFICE USE ONLY

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

APPROVED BY: ______________________________

(CLASS)	(CERTIFICATE NO.)	(SUFFIX)	(SCH. CODE)	(FEE)	(HOW REC'D)	(BASE STATE)

(CERTIFICATE NO.)	(EXPIRATION DATE)	(DATE ISSUED)

(ADDRESS CHANGE)

(STREET)	(CITY)	(STATE)	(ZIP CODE)

2. List in chronological order all professional practice since graduation (e.g. hospital department, outpatient centers, etc.). Also list all periods of absences from work and non-professional activity/employment of more than three months. **Please account for all time.** If engaged in private practice, list hospital or other professional practice.

From	To	Location and Complete Address	Position Held
______	______	______	______
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______	______	______	______
		______	

ALL QUESTIONS MUST BE ANSWERED. If any of the following questions is answered YES, explain and substantiate with documentation.

3. I hereby certify that I studied optometry and received the degree of ______________ (TYPE OF DEGREE) on ______________ (DATE) from ______________ (SCHOOL).

4. Do you hold a current license to practice Optometry in Virginia? ___. If YES, give license number: ______________.

5. List all jurisdictions in which you have been certified / licensed to practice optometry. ______________

____

____

____

____

6. List all didactic and clinical postgraduate training in the treatment of diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents. ______________

____

____

____

____

7. Do you currently hold a certificate to administer cardiopulmonary resuscitation (CPR)? If YES, provide a copy of certification.

8. Have you ever been convicted of a violation of/or pled Nolo Contendere to any Federal, State, or local statute, regulation or ordinance, or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except convictions for driving under the influence).

9. Have you ever had hospital privileges or any membership in a state or local professional society revoked, suspended, or sanctioned in any manner?

10. Have you voluntarily withdrawn from a hospital staff or from any professional society while under investigation?

11. Have you had any malpractice suits brought against you in the last ten years? If so, how many, and provide a letter from your attorney explaining each case.

12. Have you ever been physically or emotionally dependent upon the use of alcohol, drugs or been treated by, consulted with, or been under the care of a professional for substance abuse? If so, please provide a letter from the treating professional.

13. Have you ever received treatment for/or been hospitalized for a nervous, emotional or mental disorder? If so, please provide a letter from your treating professional summarizing diagnosis, treatment, and prognosis.

14. Do you have a serious physical disease or diagnosis which could affect your performance of professional duties? If so, please provide details.

15. Have you ever been adjudged mentally incompetent or been voluntarily committed to a mental institution? Please provide details.

16. AFFIDAVIT OF APPLICANT:

I, _____, being first duly sworn, depose and say that I am the person referred to in the foregoing application and supporting documents.

I hereby authorize all hospitals, institutions, or organizations, my references, personal physicians, employers (past and present), business and professional associates (past and present) and all governmental agencies and instrumentalities (local, state, federal, or foreign) to release to the Virginia Board of Medicine any information, files, or records requested by the board in connection with the processing of individuals and groups listed above, which is material to me and my application. I have carefully read the questions in the foregoing application and have answered them completely, without reservations of any kind, and I declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension or revocation of my certificate to practice as a certified optometrist in the Commonwealth of Virginia.

RIGHT THUMB PRINT

IF RIGHT THUMB IS MISSING, USE LEFT AND SO INDICATE.

THIS MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC

_____
SIGNATURE OF APPLICANT

NOTARY: City/County of _____ State of _____

Subscribed and Sworn to before me this _____ day of _____ 19____

My Commission Expires _____ _____
NOTARY PUBLIC

(NOTARY SEAL)

HRB-601
1/31/91
Optometry

Form A

CERTIFICATION OF TRAINING

Every applicant applying for certification to prescribe for and treat certain diseases, including abnormal conditions, of the human eye and its adnexa with certain therapeutic pharmaceutical agents shall provide evidence of having completed a full-time approved postgraduate optometric training program, or a full-time approved graduate optometric training program to the Board.

I hereby authorize the director of the postgraduate or graduate training program to release to the Virginia Board of Medicine the information listed below in connection with the processing of my application.

_____
Signature of Applicant

It is hereby certified that _____ completed the program for _____
Title of Postgraduate or Graduate Optometric Program

from _____ to _____.
(mo/day/yr) (mo/day/yr)

_____
School of Optometry

_____
Address

_____

_____
City/State

_____
Program Director

_____
Date

SCHOOL SEAL

Please return to: Virginia Board of Medicine
1601 Rolling Hills Drive
Richmond, VA 23229-5005

HRB-601
1-31-91
Optometry EXAM Form B

Please complete top portion and forward one form to each state Board where you hold or have held an optometry license. Extra copies may be xeroxed if needed.

NOTE: Some states require a fee, paid in advance, for providing clearance information. To expedite, you may wish to contact the applicable state/s.

* *

CLEARANCE FROM OTHER STATE BOARD

I was granted license/certificate # _____ on _____

by the state of _____. The Virginia Board of medicine requests that I submit evidence that my license/certification in the state of _____ is in good standing. You are hereby authorized to release any information in your files, favorable, or otherwise, directly to the Virginia Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005. Your earliest attention is appreciated.

_____
Signature

_____
(Please print or type name)

* *

Executive Office of State Board:

Please complete and return this form to the Virginia Board of Medicine, 1601 Rolling Hills Drive, Richmond, Virginia 23229-5005.

State of _____ Name of Licensee _____

License/Certificate No. _____ Date Issued _____

Licensed/Certified through (Check one)

☐ National Examination ☐ State Board Examination

☐ Reciprocity/Endorsement from _____

License/Certificate is: ☐ Current ☐ Lapsed

_____Diagnostic Pharmaceutical Agents _____Therapeutic Pharmaceutical Drugs

Has applicant's License/Certificate ever been suspended or revoked? ☐ YES ☐ NO. If so, for what reason?

_____

_____

Derogatory Information, if any _____

_____

(BOARD SEAL)

_____
Signature

_____
Title

_____
State Board

DEPARTMENT OF MINES, MINERALS AND ENERGY

REGISTRAR'S 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 480-03-19. Chapter 19, Coal Surface Mining Reclamation Regulations.**

Statutory Authority: §§ 45.1-1.3 and 45.1-230 of the Code of Virginia.

Public Hearing Date: September 13, 1991 - 10 a.m.
(See Calendar of Events section for additional information)

Summary:

The Department of Mines, Minerals and Energy proposes to amend its Coal Surface Mining Reclamation Regulations to be consistent with changes in corresponding federal rules, as required by law to (i) clarify that certain decisions of the department may be appealed under the Virginia Administrative Process Act; (ii) establish a procedure for an operator who has forfeited a performance bond to regain his eligibility to obtain mining permits; (iii) revise the definition of fragile and historic lands; (iv) provide for the protection of historic resources; and (v) modify the revegetation standards for forestland. Also, the changes are to (i) clarify that drainage designs must be prepared and certified by a qualified professional; (ii) require a finding that remaining operations are allowed only on previously mined areas; (iii) provide for the protection of fish and wildlife; (iv) establish a process for assessing civil penalties against individuals who control operations in violation of the reclamation program; (v) clarify when a subsidence control plan is required; (vi) remove rules for the two-acre exemption; (vii) streamline the review of petitions to have an area designated as unsuitable for coal mining; (viii) clarify that abandoned mines do not need to be inspected as frequently as active mines; (ix) make local government notification of total or partial bond release in the pool bond fund the same as the notification required for release of other forms of bond; and (x) make nonsubstantive grammatical changes in the mountaintop removal mining requirements.

The U.S. Department of the Interior, Office of Surface Mining notified the Department on June 9, 1987, and October 28, 1988, of changes that had been made in the corresponding federal rules in these areas.

The effect of these changes will be to maintain the department's Coal Surface Mining Reclamation program in a manner consistent with the corresponding federal requirements and correct or clarify inconsistencies in the rules.

REAL ESTATE APPRAISER BOARD

Title of Regulation: **VR 583-01-01. Public Participation Guidelines.**

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until September 16, 1991.
(See Calendar of Events section for additional information)

Summary:

The Real Estate Appraiser Board Public Participation Guidelines outline the procedures for the solicitation of input, written and oral, from interested parties in the formation and development of its regulations.

VR 583-01-01. Public Participation Guidelines.

§ 1. Guidelines.

Pursuant to §§ 9-6.14:7.1 and 54.1-2013 of the Code of Virginia, the Real Estate Appraiser Board will follow these public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations.

§ 2. Mailing list.

A. Maintenance of mailing list.

The Real Estate Appraiser Board (the agency) will maintain a list of persons and organizations who will be mailed the following documents as they become available:

1. "Notice of Intended Regulatory Action" to promulgate or repeal regulations;

2. "Notice of Public Comment Period" and "Public Hearing," the subject of which is proposed or existing regulations; and

3. Notice that final regulations have been adopted.

B. Additions or deletions to mailing list.

Any person wishing to be placed on the mailing list may do so by writing the agency. In addition, the agency 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. Individuals and organizations on the list will be provided all information stated in

subsection A of this section. Individuals and organizations may be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. When mail addressed to individuals and organizations on the mailing list is returned to the agency as undeliverable, those individuals and organizations shall be deleted from the list.

§ 3. Notice of intended regulatory action.

At least 30 days prior to publication of the notice of comment period and the proposed regulations as required by § 9-6.14:7.1 of the Code of Virginia, the agency will publish a "Notice of Intended Regulatory Action" in The Virginia Register of Regulations. This notice will contain a brief and concise statement of the proposed regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter.

§ 4. Petition for rulemaking.

Any person may petition the agency to adopt, amend, or delete any regulation. Any petition received shall appear on the next agenda of the agency. The agency shall have sole authority to dispose of the petition.

§ 5. Notice of comment period.

The agency shall file a "Notice of Comment Period" and its proposed regulations with the Registrar of Regulations as required by § 9-6.14:7.1. Such notice shall establish the date of the public hearing (informal proceeding), if any, and shall afford interested persons the opportunity to submit written data by a specific date, of views and arguments regarding the proposed regulations. Interested persons may make their public submissions in writing, orally at the public hearing, or both.

§ 6. Notice of formulation and adoption.

At any meeting of the board or any subcommittee or advisory committee where it is anticipated the formulation of the regulation will occur, a notice of meeting indicating that formulation or adoption of regulations will occur shall be transmitted to the Registrar for inclusion in the Virginia Register of Regulations.

§ 7. Advisory committees.

The agency may appoint advisory committees as its deems necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

§ 8. Applicability.

Sections 2 through 7 shall apply to all regulations promulgated through the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) except emergency regulations adopted in accordance with § 9-6.14:9 of the Code of Virginia.

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

Title of Regulation: **VR 672-20-32.** Yard Waste Composting Facility Regulation.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Public Hearing Dates:
July 22, 1991 - 11 a.m.
July 24, 1991 - 3 p.m.
(See Calendar of Events section for additional information)

Summary:

This regulation provides for extensive exemptions from the permitting requirements contained in Part VII of the Board's Solid Waste Management Regulations (VR 672-20-10) (VSWMR) and standards contained therein to encourage the development of yard waste composting facilities. The regulation will allow for more prompt development of yard waste composting facilities by establishing technical standards and permitting procedures more consistent with environmental risk posed by such facilities.

This regulation defines yard waste, establishes self-executing siting, design, construction, operation and closure standards, and provides for permits by rule to those owners or operators of yard waste composting facilities which meet the standards. The regulation requires certain minimum notification and certification procedures.

The regulation also provides for enforcement.

VR 672-20-32. Yard Waste Composting Facility Regulation.

Preface:

This regulation provides for certain exemptions from the permitting requirements contained in Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10) and certain substantive facility standards contained in § 6.1, VR 672-20-10, in order to encourage the development of yard waste composting facilities as required by § 10.1-1408.1 K of the Code of Virginia.

PART I.
DEFINITIONS.

§ 1.1. Definitions incorporated by reference.

The definitions set out in Part I of the Virginia Solid Waste Management Regulations (VR 672-20-10) are incorporated by reference.

§ 1.2. Definitions.

In addition to the definitions incorporated by reference, the following words and terms, when used in these regulations, shall have the following meaning unless the context clearly indicates otherwise:

"Disclosure statement" means a sworn statement or affiliation, in such form as may be required by the director, which includes:

1. The full name, business address, and social security number of all key personnel;

2. The full name and business address of any entity, other than natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of 5.0% or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years, in connection with the applicant's collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Equity" means both legal and equitable interests.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Landscape maintenance" means the care of lawns, shrubbery, and vines, and includes the pruning of trees.

"Permit by rule" means provisions of the regulation stating that a facility or activity is deemed to have a permit if it meets the requirements of the provision.

"Runon" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the compost facility.

"Yard waste" means that fraction of municipal solid waste that consists of grass clippings, leaves, brush, and tree prunings arising from general landscape maintenance.

PART II.

AUTHORITY, PURPOSE AND APPLICABILITY.

§ 2.1. Authority.

This regulation is promulgated pursuant to §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia, which authorizes the Virginia Waste Management Board to promulgate and enforce such regulations as may be necessary to carry out its duties and powers and the intent of the Virginia Waste Management Act and the federal acts.

§ 2.2. Purpose.

The purpose of this regulation is to establish appropriate standards for siting, design, construction, operation and closure, and expedited permitting procedures pertaining to certain yard waste compost facilities.

§ 2.3. Applicability.

A. This regulation applies to all persons who manage yard waste facilities to produce compost provided that:

1. The composting process employed is that with prior operational performance in the United States;

2. The yard wastes are not combined with other refuse, sludges, or animal manures; and

3. The yard waste is not managed atop a partially or fully closed solid waste disposal unit at a permitted solid waste disposal facility.

B. Persons who do not meet the conditions of § 2.3 A shall manage their waste in accordance with all provisions of the Virginia Solid Waste Management Regulations (VR 672-20-10).

§ 2.4. Relationship to other regulations.

A. These regulations do not affect the Virginia Solid Waste Management Regulations (VR 672-20-10), except that persons subject to and in compliance with these regulations are exempt from the Solid Waste Management Regulations only for those activities covered by these regulations.

B. The requirements of the Financial Assurance Regulations for Solid Waste Management Facilities (VR 672-20-1) apply to the owners and operators of yard waste composting facilities.

PART II.
FACILITY STANDARDS.

§ 3.1. Siting.

A. Yard waste composting facilities shall not be sited or constructed in areas subject to base floods. No facility shall be closer than 50 feet to any regularly flowing stream.

B. Yard waste composting facilities shall not be located in areas which are geologically unstable or where the site topography is heavily dissected.

C. Acceptable sites must have sufficient area and terrain to allow for proper management of runon, runoff, and leachate.

D. A yard waste composting facility shall not be located within 200 feet of any residential area, a health care facility, school, or similar type of public institution. The director may reduce this set-back distance if the owner or operator successfully shows that a nuisance will not be created owing to the operation of such facility.

E. A yard waste composting facility shall not be located atop a closed waste disposal unit located on property whose deed or some other instrument which is normally examined during title searches contains a notation required under § 5.1 E 8, 5.2 E 6, or 5.3 E 7 of the Virginia Solid Waste Management Regulation (VR 672-20-10).

§ 3.2. Design and construction.

A. A handling area and equipment shall be provided to segregate waste other than yard waste and noncompostable components in the yard waste and to store such components in properly constructed containers prior to their disposal at a permitted solid waste disposal facility.

B. If the yard waste compost facility is located in any area where the seasonal high water table lies within five feet of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent entry of runon or escape of runoff, leachate, and other liquids, and a sump with adequately sized pump located at the low point of the hard-surfaced area shall be provided to convey liquids to a wastewater treatment, disposal or holding facility.

C. Sound engineering controls shall be incorporated into design of facilities located on sites with:

1. Springs, seeps, and other groundwater intrusions;

2. Gas, water, or sewage lines under the active areas, or electrical transmission lines above or below the active areas.

D. Areas used for mixing, composting, curing, screening, and storing shall be graded to prevent runon, collect runoff, and provided with a drainage system to route the collected runoff to a wastewater storage, treatment, or disposal facility.

E. A buffer zone with the minimum size of 100 feet shall be incorporated in the facility design between facility

boundaries and process operations.

F. Roads serving the unloading, handling, composting, and storage areas shall be of all-weather construction.

§ 3.3. Operations.

A. The addition of any other solid waste including but not limited to hazardous, infectious, construction, debris, demolition, industrial, or other municipal solid waste to the yard waste received at the facility is prohibited.

B. Waste other than yard waste and noncompostable yard waste components shall be segregated from the compostable yard waste and promptly removed from the site for proper management at a facility permitted by the department. Segregated solid waste shall not remain at the compost site at the end of the working day unless it is stored in containers specifically designed for storage of solid waste.

C. Access to a yard waste compost facility shall be permitted only when an attendant is on duty.

D. Dust, odors, and vectors shall be controlled so they do not constitute nuisances or hazards.

E. The operator shall prepare, implement, and enforce a safety program designated to minimize hazards.

F. Open burning shall be prohibited.

G. Fugitive dust and mud deposits on main off-site roads and access roads shall be minimized at all times to limit nuisances.

H. Leachate or other runoff from a compost facility shall not be permitted to drain or discharge directly into surface waters except when authorized under a Virginia-NPDES Permit issued pursuant to the State Water Control Board regulation VR 680-14-01, NPDES Program or otherwise approved by that agency.

I. Designed buffer zones shall be maintained.

§ 3.4. Closure.

The owner or operator shall close his facility in a manner that minimizes the need for further maintenance. All waste and residues, including unfinished compost, shall be removed and disposed in a permitted facility. Any finished compost present at the time of closure shall be removed and marketed or utilized in accordance with the operational plan for the facility, or disposed in a permitted facility.

A. Closure plan and amendment of plan.

1. The owner or operator of a compost facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the facility at the time when its operation is most extensive. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of a final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure.

2. The closure plan shall be submitted to the department prior to the construction and operation of the compost facility. The department shall review each closure plan no later than 60 days from receipt. If the department finds a plan to be deficient, it shall cite the reasons for the finding and state what amendments are necessary. If found to be deficient, the closure plan shall be amended by the owner or operator within 90 days of the director's finding. If the amended closure plan continues to be deficient, the department will amend the plan to meet the closure performance requirements.

3. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan at any time changes in operating plans or facility design affects the closure plan. Amended plans shall be submitted to the department within 15 days of such changes. The director may require that amended plans be modified to meet the closure requirements.

4. At any time during the operating life of the facility, the closure plan shall be made available to the department upon request of the director.

5. The owner or operator shall submit an updated closure plan to the director at least 180 days before the date he expects to begin final closure. The director will modify, approve, or disapprove the plan within 90 days of receipt. If the closure plan is disapproved, the owner or operator shall modify the plan to meet the closure requirements. If an owner or operator plans to begin closure within 180 days after the effective date of these regulations, he shall submit the necessary plans on the effective date of these regulations.

B. Time allowed for closure.

The owner or operator shall complete closure activities in accordance with the approved closure plan and within 12 months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activity will, of necessity, take longer than 12 months to complete; and that he has taken all necessary steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

C. At the beginning of the closure activities, the owner or operator shall post at least one sign notifying all

persons of the closing, and providing a notice of prohibiting further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

D. Evidence of proper closure.

A yard waste compost facility shall be deemed properly closed when the above actions have been taken by the owner or operator and a representative of the department verifies same by an on-site inspection and provides a written confirmation that closure has been completed properly.

PART IV.
FACILITY PERMIT BY RULE.

§ 4.1. Permit by rule provisions.

Notwithstanding any provisions of Part VII of the Virginia Solid Waste Management Regulations (VR 672-20-10), the owner or operator of a component facility which accepts only yard wastes as defined in Part I of this regulation shall be deemed to have a solid waste management facility permit if the owner or operator:

1. Demonstrates to the director the legal control over the site for the useful life of the facility. A documentation of an option to purchase will be considered as a temporary substitute for a deed; however, the true copy of a deed shall be provided to the department before construction begins.

2. Notifies the director of his intent to operate such a facility and provides the department:

a. The certificate from the governing body of the county, city, or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances; and

b. A disclosure statement as defined in Part I of this regulation as required under § 10.1-1408.1 B of the Code of Virginia.

3. Provides the director with a certification that the facility meets the siting standards of § 3.1 of this regulation.

4. Furnish to the director a certificate signed by a professional engineer licensed to practice by the Commonwealth that the facility has been designed and constructed in accordance with the standards of § 3.2 of this regulation. Such certificate shall contain no qualifications or expectations from the requirements and plans.

5. Submits to the director an operational plan describing how the standards of § 3.3 of this regulation will be met and the procedure for marketing or utilizing the finished compost.

6. Submits to the director an approved closure plan describing how the standards of § 3.4 of this regulation will be met.

7. Submits to the director the proof of financial responsibility if required by the Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1).

§ 4.2. Change of ownership.

A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner shall notify the department of the sale and fulfill all the requirements contained in § 4.1 of this regulation with the exception of § 4.1 G of this regulation. Upon presentation of the financial assurance proof required by § 4.1 G of this regulation by the new owner, the department will release the old owner from his closure and financial responsibilities and acknowledge existence of the new permit by rule in the name of the new owner.

§ 4.3. Facility modifications.

The owner or operator of a yard waste compost facility may modify the design and operation of the facility by furnishing the department a new certificate required by § 4.1 D and a new operational plan required by § 4.1 E. Whenever modifications in the design or operation of the facility affect the provisions of the approved closure plan, the owner or operator shall submit an amended closure plan in accordance with the requirements of § 3.4. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1).

PART V.
ENFORCEMENT.

§ 5.1. Loss of permit by rule status.

In the event that a yard waste compost facility operating under a permit by rule violates any provisions of this regulation, the owner or operator of the facility will be considered to be operating an unpermitted facility as provided for in § 2.6 of the Virginia Solid Waste Management Regulations (VR 672-20-10) and shall be required to either obtain a new permit as required by Part VII or close under Part V or VI of those regulations, as applicable.

§ 5.2. Termination.

The department shall terminate permit by rule and shall require closure of the facility whenever he finds that:

1. As a result of the changes in key personnel, th

requirements necessary for a permit by rule are no longer satisfied;

2. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under this regulation, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement; or

3. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction; or have been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF HISTORIC RESOURCES (BOARD OF)

Title of Regulation: **VR 390-01-02. Regulations Governing Permits for the Archaeological [~~Excavation~~ *Removal*] of Human Remains.**

Statutory Authority: § 10.1-2300 et seq. of the Code of Virginia.

Effective Date: August 14, 1991.

Summary:

This regulation implements the Virginia Antiquities Act, § 10.1-2305 of the Code of Virginia, covering permits for archaeological removal of human remains and associated artifacts. It does not change or replace any existing burial or cemetery protection laws and regulations, nor does it implement preceding sections of the Virginia Antiquities Act. 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 site. It will also affect any such archaeological investigation conducted as part of a court-approved removal of a cemetery.

The regulation spells out the administrative conditions attached to such permits, the requirements for application and for work conducted under the permit, requirements for public notification and final disposition of human remains following completion of research. Administrative conditions include deadlines for interim and final reports, provision for monitoring by the department and statement that failure to complete the conditions of one permit acceptably may be considered grounds for denying subsequent applications. Also included are the conditions under which extensions of permits will be considered.

The requirements for professional qualifications and nature of research are consistent with federal regulations and those of other states, as well as with the requirements for archaeological work conducted or reviewed under other department programs. The public notice process parallels that required for obtaining a court order to remove family cemeteries. It contains further assurances to notify and consult with the Virginia Council on Indians and appropriate tribal groups in cases involving prehistoric and historic Native American graves. The preferred long-term disposition of remains is stated as reburial within two years unless an alternate plan is approved by the department through consultation with key interested parties.

VR 390-01-02. Regulations Governing Permits for the Archaeological [~~Excavation~~ *Removal*] of Human Remains.

§ 1. Definitions.

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

"Archaeological site" means a geographic area on dry land that contains any evidence of human activity which is or may be the source of important historic, scientific, archaeological or educational data or objects, regardless of age. Dry land includes land which is saturated or under water on a temporary basis.

["Associated artifacts" means natural objects or objects of human manufacture worn by or buried with human remains at the time of burial.]

"Board" means the Virginia Board of Historic Resources

"Curation" means the care and maintenance of artifacts or human remains [, or both,] from the time they are removed from the ground during any period of analysis and study, and as a possible option for long-term disposition of excavated materials.

"Department" means the Virginia Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources.

"Emergency" means a situation in which human burials [~~which~~ that] have or may have scientific or historic significance are threatened with immediate and unavoidable destruction, or in which there likely will be a loss of scientific data because of the disturbance or destruction of human burials. Emergency situations exist where failure to initiate a scientific investigation immediately would result in irreversible loss of significant information. An emergency may exist regardless of whether the human remains are encountered unexpectedly, or may reasonably be anticipated, or suspected. Such situations include but are not limited to (i) construction projects where avoidance or delays are not possible or would constitute major hardships; (ii) sites where natural processes such as floods or erosion threaten destruction; and (iii) sites where looting is occurring, or is expected to occur within a short period of time.

"Field investigation" means the study of the traces of human culture at any site by means of surveying, sampling, excavation, or removing surface or subsurface material, or going on a site with that intent.

["Human remains" means a human body or any part of a body, particularly skeletal remains, at any stage of deterioration.]

"Person" means any natural individual, partnership, association, corporation, or other legal entity.

["Unmarked burial" means grave or location where human remains were intentionally buried but which lacks any marker identifying the person or persons buried there. This may include primary or secondary burials. Any such burial shall constitute evidence of human activity as stated under the above definition of "archaeological site."]

§ 2. Applicability.

This regulation shall apply to any person who conducts any field investigation involving the removal of human remains or associated artifacts from any unmarked burial on an archaeological site [; no change in the burial laws of the Commonwealth is intended]. This regulation also applies if archaeological investigations are undertaken as part of a court-approved removal of a cemetery.

§ 3. General provisions.

Any person [~~intending to conduct~~ conducting] any field investigation involving [; ~~or which may reasonably be anticipated to involve,~~] the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall first obtain a permit from the director.

1. No field investigation [involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site] shall be conducted without a permit.

[2. In cases where a field investigation may reasonably be anticipated to involve the excavation and removal of human remains or associated artifacts, the person conducting such investigation may obtain a permit prior to the actual discovery of human burials.

3. In any case where human remains are encountered in a field investigation without having received a permit, all work on the burial or burials shall cease until a permit has been obtained.]

[~~2.~~ 4.] No field investigation [involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site] shall be performed except under the supervision and control of an archaeologist meeting the qualifications stated in § 4 of this regulation.

[~~3.~~ 5.] Any human remains removed in the course of field investigations shall be examined by a skeletal biologist or other specialist meeting the qualifications stated in § 4.

[~~4.~~ 6.] Any approved field investigation shall include [~~a~~ an interim progress] report summarizing the field portion of the permitted investigation within [~~30~~ 60] days of completion of the removal of all human remains and associated artifacts. [Reports indicating progress on analysis and report preparation shall be submitted to the department at 90-day intervals until the final report and disposition are accomplished.

7. The applicant shall make the site and laboratory available to the department for purposes of monitoring progress and compliance with these regulations as requested by the department.]

[~~5.~~ 8.] A copy of the final report [including the analysis of materials removed from the burial] shall be delivered to the director according to the timetable described in the application.

[9. Documentation of final disposition as required by the permit shall be delivered to the department within 15 days of such disposition.

10. Work conducted under a permit will not be considered complete until all reports and documentation have been submitted to and reviewed by the department to meet all conditions cited in these regulations or specified as part of an approved permit.

Failure to complete the conditions of the permit within the permitted time limit may result in revocation of the permit and constitute grounds for denial of future applications.

11. The applicant may apply for an extension or change to the conditions of the permit, including changes in research design, principal personnel or disposition, for good cause. Granting such an extension or alteration will be at the discretion of the director, after consultation with interested parties.]

§ 4. Permit application.

A. Application for a permit shall be in such form as required by the director, but shall include the following basic information:

1. Name, address, phone number and institutional affiliation of the applicant.

2. Location and description of the archaeological site for which field investigation is proposed, including site number if assigned.

3. A written statement of the landowner's permission [

~~to both~~ both to] conduct such research and to remove human remains on his property, and allowing the director or his designee access to the field investigation site at any reasonable time for the duration of the permit. The landowner's signature should be notarized.

4. Applicant shall provide evidence indicating that adequate [~~support is~~ resources are] available to carry out [the] research design.

[5. Applicant shall indicate whether or not this permit is being requested as part of a federal, state or local government undertaking.]

B. A statement of goals and objectives of the project and proposed research design shall be provided. The research design shall, at a minimum, [~~include~~ address] the following:

1. [~~The~~ How the] research design [~~for archaeology shall adhere~~ adheres] to professionally accepted methods, standards, and processes [~~in order~~ used] to obtain, evaluate, and analyze data on mortuary practices in particular and cultural practices in general.

2. Field [~~recordation~~ documentation which] shall include, but not be limited to (i) photographs, (ii) maps, (iii) drawings, and (iv) written records. Collected information shall include, but not be limited to (i) considerations of containment devices, (ii) burial shaft or entombment configuration, (iii) burial placement processes, (iv) skeletal positioning and orientation, (v) evidence of ceremonialism or religious practices, and (vi) grave items or artifacts analyses.

To the extent possible, the cultural information shall be examined at the regional level with appropriate archival research. The results of the evaluation, along with the osteological analysis, will be submitted in report form to the director for review, comment, and final acceptance.

3. [The planned] osteological examination of the human skeletons [which] shall include determinations of age, sex, racial affiliation, dental structure, and bone inventories for each individual in order to facilitate comparative studies of bone and dental disease. Said inventories shall provide [to the extent possible] a precise count of all skeletal elements observed, as well as the degree of preservation (complete or partial); separate tabulation of the proximal and distal joint surfaces for the major long bones should be recorded.

[~~The bones should be examined;~~ [The research design should also address at a minimum the following additional analytical techniques and when they will be used: under what circumstances will bone be examined] and x-rayed if necessary, to detect lesions or conditions resulting from disease, malnutrition, trauma, or congenital defects [; ~~The~~ ; the] presence of dental pathological conditions including carious lesions, premortem tooth loss, and alveolar abscessing [~~should~~ to] be recorded [; ~~Craniometric~~ : craniometric] and postcraniometric data [~~should~~ to] be obtained in a systematic format that provides basic information such as stature [; and other techniques as appropriate] . Although the initial focus concerns description and documentation of a specific sample, the long-term objective is to obtain information that will facilitate future comparative research. The report based on the osteological analysis should identify the research objectives, method of analysis, and results. Specific data (e.g., measurements, discrete trait observations) supplementing those traits comprising the main body of the report may be provided in a separate file including, for example, tables, graphs, and copies of original data collection forms. Unique pathological specimens should be photographed as part of basic documentation.

4. [~~A~~ The expected] timetable for excavation, analysis and preparation of the final report on the entire investigation.

C. A resume, vitae, or other statement of qualification demonstrating that the persons planning and supervising the field investigation and subsequent [~~analyses~~ analysis] meet the [~~appropriate professional~~ minimum] qualifications [consistent with the federal standards a cited in 36CFR61 and 43CFR7,] as follows:

1. The qualifications of the archaeologist performing [or supervising] the work shall include a graduate degree in archaeology, anthropology, or closely related field plus:

a. At least one year of full-time professional experience or equivalent specialized training in archaeological research, administration or management;

b. [~~A~~ At] least four months of supervised field and analytic experience in general North American archaeology; and

c. Demonstrated ability to carry research to completion.

In addition [~~to these minimum qualifications, a professional in prehistoric archaeology~~ , a prehistoric archaeologist] shall have at least one year of full-time [~~professional~~] experience at a supervisory level in the study of archaeological resources of the prehistoric period. [~~A professional in historic archaeology~~ An historic archaeologist] shall have at least one year of full-time experience at a supervisory level in the study of archaeological resources of the historic period.

2. The qualifications of the skeletal biologist needed t

undertake the types of analyses outlined in subdivision B 3 of § 4 should have at least a Masters degree [with a specialization] in human skeletal biology, bioarchaeology, forensic anthropology, or some other field of physical anthropology, plus two years of laboratory experience in the analysis of human skeletal remains. The individual must be able to develop a research design appropriate to the particular circumstances of the study and to conduct analyses of skeletal samples (including, age, sex, race, osteometry, identification of osteological and dental disease, and the like), employing state-of-the-art technology. The individual must have the documented ability to produce a concise written report of the findings and their interpretation.

D. Under extraordinary circumstances, the director shall have the authority to waive the requirements of research design and professional qualifications.

E. The application shall include a statement describing the curation, which shall be respectful, and the proposed disposition of the remains upon completion of the research. When any disposition other than reburial is proposed, then the application shall also include a statement of the reasons for alternative disposition and the benefits to be gained thereby. [In the absence of special conditions including those that may come to light during excavation or analysis, this disposition shall be reburial within a two-year period from the date of removal unless requested otherwise by next of kin or other closely affiliated party.]

F. When a waiver of public notice or other requirement based on an emergency situation is requested by the applicant then the application must include:

1. A statement describing specific threats facing the human skeletal remains or associated artifacts. This statement must make it clear why the emergency justifies the requested waiver.

2. A statement describing the known or expected location of the burials or the factors that suggest the presence of burials.

3. A statement describing the conservation methods that will be used, especially for skeletal material. Note that conservation treatment of bones should be reversible.

§ 5. Public comment.

A. Upon receiving notice from the director that the permit application is complete, the applicant shall arrange for public notification as deemed appropriate by the department.

B. In all cases, the applicant shall publish or cause to be published a notice in a newspaper of general circulation in the area where the field investigation will occur. This notice shall include:

1. Name and address of applicant.

2. Brief description of proposed field investigation.

3. A statement informing the public that they can request public meeting.

4. A contact name, address and the phone number where they can get more information, including a location in the project vicinity where a copy of the complete application can be viewed.

5. A statement that the complete application can be reviewed and copied at the department.

6. When any disposition other than reburial is proposed this must be stated in the public notice. The notice should contain a statement of the proposed disposition and specifically request public comment on this aspect of the application.

7. Deadline for receipt of comments.

The notice shall be of a form approved by the director and shall invite interested persons to express their views on all aspects of the proposed field investigation to the director by a date certain prior to the issuance of the permit. Such notice shall be published once each week for four consecutive weeks.

C. Such notice may be waived:

1. If the applicant can document that the family of the deceased has been contacted directly and is in agreement with the proposed actions.

2. In cases where applicant has demonstrated that, due to the rarity of the site or its scientific or monetary value and where security is not possible, there is a likelihood that looting would occur as a result of the public notice.

3. If in the opinion of the director the severity of a demonstrated emergency is such that compliance with the above public notice requirements may result in the loss of significant information, or that the publication of such notice may substantially increase the threat of such loss through vandalism, the director may issue a permit prior to completion of the public notice and comment requirements. In such cases the applicant shall provide for such public notice and comment as determined by the director to be appropriate under the circumstances.

D. In cases of marked burials [where a permit is sought pursuant to a court order in accordance with § 10.1-2305 C] , [the applicant shall provide] evidence [~~shall be provided~~] of a reasonable effort to identify and notify next of kin.

E. In addition to the notification described in subsection B of § 5, in the case of both prehistoric and historic Native American burials, the department shall inform the Virginia Council on Indians [;] and the appropriate [~~tribe where tribal affiliation has been determined, and request comments from each of these groups. Comments will specifically be requested in cases where the proposed disposition is anything other then reburial~~ tribal leaders] .

F. [The department shall maintain a list of individuals and organizations who have asked to be notified of permit actions. This list will be updated annually and notices sent to all parties currently listed. In all cases notification shall be sent to the appropriate local jurisdiction.]

[G.] Prior to the issuance of a permit, the director may elect to hold a public [~~hearing~~ meeting] on the permit application. The purpose of the public meeting shall be to obtain public comment on the proposed field investigations. The director shall decide whether or not to hold a public meeting on a case-by-case basis, and will include any requests following from the public notice in such considerations.

§ 6. Issuance or denial of permit.

A. Upon completion of the public comment period, the director shall decide whether to issue the permit [within a 30-day review period] . In the event the director received no adverse public comment, no further action is required prior to decision.

B. The director shall consider any [~~adverse~~] comment received and evaluate it in the light of the benefits of the proposed investigation, the severity of any emergency, or the amount of scientific information which may be lost in the event no permit is issued. The director may also take such comments into account in establishing any conditions of the permit. [In considering such comment, the director shall give priority to comments and recommendations made by individuals and parties most closely connected with the human burials subject to the application.]

C. In making his decision on the permit application, the director shall consider the following:

1. The level of threat facing the human skeletal remains and associated cultural resources.

2. The appropriateness of the goals, objectives, research, design, and qualifications of the applicants to complete the proposed research in a scientific fashion. The director shall consider the [~~Standards and Guidelines of the United States Secretary of the Interior~~ United States Secretary of the Interior's Standards and Guidelines] for Archaeology and Historic Preservation, set out at 48 Fed. Reg. 44716 (September 29, 1983), in determining the appropriateness of the proposed research and in evaluating the qualifications of the applicants.

3. Comments received from the public.

4. The appropriateness of the proposed disposition of remains upon completion of the research. The director may specify a required disposition as a condition of granting the permit.

5. The performance of the applicant on any prior permitted investigation.

[6. The applicability of other federal, state and local laws and regulations.]

[D. Failure to adequately meet all conditions in a previous permit shall be grounds for denial of any subsequent permit applications.]

[~~D.~~ E.] In the event the director proposes to deny a permit application, the director shall conduct an informal conference in accordance with § 9-6.14:11 of the Administrative Process Act.

[~~E.~~ F.] The permit shall contain such conditions which, in the judgment of the director, will protect the excavated human remains or associated artifacts.

[~~F.~~ G.] A permit shall be valid for a period of time to be determined by the director as appropriate under the circumstances.

[H. The director may extend or change the period or conditions of the permit or the period of analysis as noted in § 3.11. In order to obtain such an extension or change the applicant must submit a written request demonstrating good cause. "Good cause" may include but not be limited to situations in which many more burials were encountered than were expected in the original permit application or where a new analytical technique or question will be applied within an expanded term of the permit. In making any decision to extend a permit, the director will consult with appropriate interested parties as identified in the initial public review.]

[~~G.~~ I.] The director may revoke any permit issued under these regulations for good cause shown. Such revocation shall be in accordance with the provisions of the Administrative Process Act.

§ 7. Excavations by the department.

The director may perform or cause to be performed a field investigation without a permit. The director shall comply with the public notice and comment provisions described above. [All work conducted by the department under this clause shall meet the substantive requirements as set out in § 4 of these regulations.]

§ 8. Appeals.

A. The decision of the director made following the informal conference required by subsection D of § 6 shall

be a final case decision subject to judicial review in accordance with the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

B. Any interested party may appeal the director's decision to issue a permit or to act directly to excavate human remains to the local circuit court in accordance with § 10.1-2305 E of the Code of Virginia.

DEPARTMENT OF SOCIAL SERVICES (STATE 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 Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 615-01-29. Aid to Dependent Children (ADC) Program - Disregarded Income and Resources.**

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: August 14, 1991.

Summary:

According to Aid to Families with Dependent Children (AFDC) Action Transmittal Number FSA-AT-91-5 from the U.S. Department of Health and Human Services, states must disregard as income and resources payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426). Additionally, according to a U.S. Supreme court decision, states are no longer required to apply the $50 support disregard provision to Social Security (SSA) benefits received by eligible children, based on the account of the child's disabled parent, in determining eligibility for the Aid to Dependent Children (ADC) program. This regulation assures compliance with federal laws.

As this regulation is being adopted in response to a federal statutory change, the Department of Social Services, at the direction of the State Board of Social Services, is requesting exclusion from the requirements of Article 2 of the Administrative Process Act.

VR 615-01-29. Aid to Dependent Children (ADC) Program - Disregarded Income and Resources.

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:

"Agent Orange payments" means any payment from the Agent Orange Settlement Fund or any other fund established pursuant to the Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

"Aid to Dependent Children (ADC) Program" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Allowable reserve" means the type and amount of real and personal property, including cash and liquid assets, which may be retained by the assistance unit without affecting eligibility for financial assistance.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive an assistance payment.

"Emergency" means any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

"Major disaster" means any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act to supplement the efforts and available resources of states, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

PART II.
DISREGARDED INCOME AND RESOURCES.

§ 2.1. Disregarded income.

A. The following income of members of the assistance unit, a parent not included in the assistance unit or anyone whose income is used in determining eligibility or the amount of assistance in the Aid to Dependent Children (ADC) program, shall be disregarded.

B. Income which is disregarded under the following provisions shall not be counted in determining the need for assistance of any individual under any other federal assistance program:

1. Home produce of the assistance unit utilized for their own consumption;

2. The value of food coupons under the Food Stamps program;

3. The value of foods donated under the U.S.D.A. Commodity Distribution Program, including those furnished through school meal programs;

4. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

5. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

6. Grants or loans to any undergraduate students for educational purposes made or insured under any program administered by the U.S. Commissioner of Education.

Programs that are administered by the U.S. Commissioner of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Guaranteed Student Loan (including the Virginia Education Loan), PLUS Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

7. Funds derived from the College Work Study Program;

8. A scholarship, loan, or grant obtained and used under conditions which preclude its use for current living costs;

9. Training allowance (transportation, books, required training expenses, and motivational allowance) provided by the Department of Rehabilitative Services (DRS) for persons participating in Rehabilitative Services Programs.

This disregard is not applicable to the allowance provided by DRS to the family of the participating individual;

10. Any portion of an SSI payment or Auxiliary Grant;

11. Payments to VISTA Volunteers under Title I, when the monetary value of such payments is less the minimum wage as determined by the Director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-13, the Domestic Volunteer Service Act of 1973;

12. The Veterans Administration educational amount for the caretaker 18 or older is to be disregarded when it is used specifically for educational purposes.

Any additional money included in the benefit amount for dependents is to be counted as income to the assistance unit;

13. Foster care payments received by anyone in the assistance unit;

14. Unearned income received from Title IV, Part B (Job Corps) of the Job Training Partnership Act (JTPA) by an eligible child is to be disregarded as an incentive payment. However, any payment received by any other Job Corps participant or any payment made on behalf of the participant's eligible children) is to be counted as income to the assistance unit;

15. Income tax refunds including earned income tax credit advance payments and refunds;

16. Payments made under the Fuel Assistance program;

17. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs; the Women, Infants, and Children (WIC) program; and the Child Care Food program;

18. HUD Section 8 and Section 23 payments;

19. Unearned income received by an eligible child under Title II, Parts A and B, and Title IV, Part A, of the Job Training Partnership Act (JTPA) is to be disregarded;

20. Funds distributed to, or held in trust for, members of any Indian tribe under Public Laws 92-254, 93-134, 94-540, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

21. Tax exempt portions of payments made under the Alaska Native Claims Settlement Act (Public Law 92-203);

22. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 92-114);

23. The first $50 of total child or spousal support payments received each month by an assistance unit ~~, including Social Security benefits received by a child,~~ prior to the issuance of the first ongoing check ~~.~~ ;

~~For ongoing cases, an assistance unit is entitled to~~

~~receive one disregard of the first $50 of combined support and Social Security benefits received per month;~~

24. Payments sent to the recipient by the Commonwealth which are identified as disregarded support;

25, Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

26. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Islands Restitution Act (Public Law 100-383); ~~and~~

27. Agent Orange payments ~~.~~ *; and*

28. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426).

§ 2.2. Disregarded resources.

In determining eligibility for financial assistance for the Aid to Dependent Children (ADC) program, all resources shall be considered in relation to the $1,000 allowable reserve, except as specifically disregarded below. These resources shall be disregarded as long as they are kept separate from the allowable reserve. In the event any funds derived from subdivisions 3 through ~~14~~ *16* of this section are combined with other resources, they shall be considered in determining eligibility.

1. The value of the food coupons under the Food Stamp Program;

2. The value of foods donated under the U.S.D.A. Commodity Distribution Program;

3. Payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

4. Benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965, as amended;

5. Grants or loans to undergraduate students for educational purposes, made or insured under any program administered by the U.S. Commissioner of Education.

Programs that are administered by the U.S. Commissioner of Education include: Pell Grant, Supplemental Educational Opportunity Grant, Perkins Loan, Congressional Teacher Scholarship Program, College Scholarship Assistance Program, and the Virginia Transfer Grant Program;

6. The value of supplemental food assistance received under the Child Nutrition Act of 1966. This includes all school meal programs, the Women, Infants, and Children (WIC) program, and the Child Care Food program;

7. Payments to VISTA volunteers under Title I, when the monetary value of such payments is less than minimum wage as determined by the director of the Action Office, and payments for services of reimbursement for out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE) and other programs pursuant to Titles II and III, of Public Law 93-113, the Domestic Volunteer Service Act of 1973;

8. Funds distributed to, or held in trust for, members of any Indian tribe under Public Law 92-254, 93-134, 94-540, 98-64, 98-123, or 98-124. Additionally, interest and investment income accrued on such funds while held in trust, and purchases made with such interest and investment income, are disregarded;

9. Tax exempt portions of payments made under the Alaska Native Claims Settlement Act (Public Law 92-903);

10. Income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes (Public Law 94-114);

11. Disregarded support payments which were sent to the recipient by the Virginia Department of Social Services or determined to be a disregard by the eligibility worker;

12. Tools and equipment belonging to a temporarily disabled member of the assistance unit during the period of disability, when such tools and equipment have been and will continue to be used for employment;

13. Federal major disaster and emergency assistance provided under the Disaster Relief and Emergency Assistance Amendments of 1988, and disaster assistance provided by state and local governments and disaster assistance organizations (Public Law 100-707);

14. Payments received by individuals of Japanese ancestry under the Civil Liberties Act of 1988, and by Aleuts under the Aleutian and Pribilof Island Restitution Act (Public Law 100-383); ~~and~~

15. Agent Orange payments ~~.~~ *; and*

16. Payments received by individuals under the Radiation Exposure Compensation Act (Public Law 101-426).

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

[illegible]

June 26, 1991

Mr. Larry D. Jackson, Commissioner
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23229

Re: VR 615-01-29 Aid to Dependent Children (ADC) Program - Disregarded Income and Resources.

Dear Mr. Jackson:

This will acknowledge receipt of the above-referenced regulations from the Department of Social 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

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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 Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **VR 615-01-40. Aid to Dependent Children (ADC) Program - Exclusion of Children Receiving Adoption Assistance and Foster Care Maintenance Payment.**

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: October 1, 1991.

Summary:

This regulation will ensure that the Aid to Dependent Children (ADC) Program is in compliance with OBRA 1990. Pursuant to the provisions of this regulation, a child who is a natural or adoptive sibling of another child receiving ADC and who is otherwise required to be in the assistance unit and receives an adoption assistance payment or a foster care maintenance payment is not included in the assistance unit. Accordingly, his income and resources are not considered in the determination of eligibility and the amount of payment for the remaining unit members. The only exception to this provision is that if the exclusion of a child receiving an adoption assistance payment causes the ADC benefit of the family to be reduced, the child's needs must be included. This exception does not apply to children receiving a foster care maintenance payment.

VR 615-01-40. Aid to Dependent Children (ADC) Program - Exclusion of Children Receiving Adoption Assistance and Foster Care Maintenance Payment.

PART I.
DEFINITIONS.

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

"Aid to Dependent Children (ADC) Program" means the program administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive

an assistance payment.

"Adoption assistance" means a money payment or services provided to adoptive parents on behalf of a child with special needs.

"Categorical requirements" means those requirements, other than income requirements necessary to qualify for the ADC Program.

"Siblings" means two or more children with at least one natural or adoptive parent in common.

"SSN" means social security number.

PART II.
CHILDREN REQUIRED TO BE IN THE ASSISTANCE UNIT.

§ 2.1. All blood related or adoptive siblings, including those emancipated by court order or marriage, who meet the categorical requirements of an eligible child, living in the same home as the child for whom assistance is requested must be included in the assistance unit. The following child(ren) are not to be included in the assistance unit:

1. A child who is receiving SSI;

2. A child who is ineligible for a specified period of time based on the receipt of a lump sum by the assistance unit in which the child was previously a member;

3. A child who is an alien who has been in the U.S. less than three years and is sponsored by an agency/organization, unless it can be documented that the agency/organization no longer exists or the agency/organization provides a statement that they are financially unable to support the alien;

4. Under the Employment Services Program a child 16 to 18, out of school or enrolled in school part time, who fails or refuses to participate without good cause must be excluded from the assistance unit unless otherwise exempt;

5. A child whose SSN has not been verified or application has not been made for such SSN. See 201.8 *of the ADC Manual* for the exception regarding a newborn child;

6. A child receiving an adoption assistance payment or a foster care maintenance payment. Exception: If excluding a child who is receiving an adoption assistance payment reduces the ADC benefit to the remaining family members, the child must be included.

Income and resources of a child who is not required to be in the assistance unit are not considered available.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

June 26, 1991

Mr. Larry D. Jackson, Commissioner
Department of Social Services
8007 Discovery Drive
Richmond, Virginia 23229

Re: VR 615-01-40 Aid to Dependent Children (ADC) Program - Exclusion of Children Receiving Adoption Assistance and Foster Care Maintenance Payment.

Dear Mr. Jackson:

This will acknowledge receipt of the above-referenced regulations from the Department of Social 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:lbc

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Title of Regulation: **VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.**

Statutory Authority: §§ 2.1-386 and 63.1-248.6 of the Code of Virginia.

Effective Date: August 14, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:14 VA.R. 2118-2119 April 8, 1991.

VIRGINIA RACING COMMISSION

Title of Regulation: **VR 662-03-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: August 14, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:11 VA.R. 1661-1682 February 25, 1991.

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Title of Regulation: **VR 662-04-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Claiming Races.**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: August 14, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:11 VA.R. 1683-1685 February 25, 1991.

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Title of Regulation: **VR 662-05-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Standardbred Racing.**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: August 14, 1991.

NOTICE: As provided in § 9-6.14:22 of the Code of Virginia, this regulation is not being republished. It was adopted as it was proposed in 7:12 1829-1831 March 11, 1991.

COUNCIL ON THE ENVIRONMENT

Title of Regulation: **VR 305-02-01. Guidelines for the Preparation of Environmental Impact Assessment Guidelines for Oil or Gas Well Drilling Operations in Tidewater Virginia.**

Statutory Authority: § 62.1-195.1 of the Code of Virginia.

Effective Dates: June 26, 1991 through June 25, 1992.

Preamble:

Effective July 1, 1990, § 62.1-195.1 (C) of the Code of Virginia requires any person desiring to drill for oil or gas in Tidewater Virginia to submit to the Department of Mines, Minerals and Energy, as part of an application for a permit to drill an oil or gas well, an environmental impact assessment. The Council on the Environment is responsible for developing criteria and procedures for preparing and evaluating environmental impact assessments. Section 62.1-195.1 (F) requires that Council develop, in conjunction with other state agencies, the criteria and procedures for preparing environmental impact assessments in conformance with the requirements of the Administrative Process Act.

The purpose of this regulation is to set forth the criteria and procedures to be followed when preparing an environmental impact assessment for an oil or gas well drilling operation proposed in Tidewater Virginia and to describe the process that will be followed in reviewing and commenting on the environmental impact assessment by state agencies and the general public.

Nature of the Emergency and Necessity for Action:

Virginia Code § 62.1-195.1 requires that anyone seeking to drill for oil or gas in Tidewater Virginia must prepare an environmental impact assessment for review by the Council on the Environment. The Department of Mines, Minerals and Energy may not issue a well drilling permit until it has considered the findings and recommendations of the Council. The Council must "develop criteria and procedures to assure the orderly preparation and evaluation" of these assessments.

The Office of the Attorney General has stated that the validity of any drilling permit issued in Tidewater Virginia may be subject to a legal challenge if it is not reviewed pursuant to the requirements of § 62.1-195.1 and the criteria and procedures required to be adopted by the Council on the Environment. The Office of the Attorney General has informed the council that it should promulgate a regulation setting forth the criteria and procedures for preparing and reviewing environmental impact assessments before an applicant can be required to submit an environmental impact assessment.

On June 12, 1991, the Department of Mines, Minerals and Energy notified the Administrator of the Council on the Environment that it has received a permit application to drill a well in King George County, Virginia and forwarded a copy of an impact assessment on the proposed drilling operation to the Administrator. King George County is in Tidewater Virginia. A permit application for such an oil or gas well drilling operation triggers the environmental impact assessment requirement of § 62.1-195.1 of the Code.

The Council on the Environment is currently working on developing a permanent oil and gas well drilling environmental impact assessment regulation. However, the procedures and requirements of the Administrative Process Act do not allow enough time for the Council to promulgate the impact assessment criteria and procedures as permanent regulations before reviewing the assessment now in hand.

Finding of Emergency:

The Council on the Environment issues a finding that there is a need to promulgate an emergency regulation setting forth the criteria and procedures governing the preparation and review of environmental impact assessments for oil and gas well drilling activities in Tidewater, Virginia. This action must be taken in order to prevent unreasonable and unnecessary delays in the Department of Mines, Minerals and Energy's oil and gas well permitting activities for proposals located in Tidewater Virginia. It will also ensure that the provisions of § 62.1-195.1 enacted by the 1990 General Assembly raised regarding the conduct of oil or gas well drilling operations in Tidewater Virginia are considered by the Department of Mines, Minerals and Energy in its permitting decisions.

Summary:

The proposed regulation establishes criteria and procedures to be followed by applicants preparing and by persons reviewing an environmental impact assessment for oil and gas well drilling operations and related production and transportation activities proposed in Tidewater Virginia. The criteria establish information requirements for describing i) a proposed oil or gas operation, ii) the environment and natural resource features potentially affected by an oil or gas operation, iii) the probability and consequences of an oil or gas discharge to the environment, iv) oil or gas release contingency plans, v) the fiscal and economic impacts associated with the proposed operation, vi) the potential secondary environmental impacts resulting from induced economic development, and vii) general review and comment procedures.

VR 305-02-01. Guidelines for the Preparation of Environmental Impact Assessment Guidelines for Oil or Gas Well Drilling Operations in Tidewater Virginia.

Article 1 - Applicability and General Requirements.

§ 1. Definitions.

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

"Access road" means a paved or unpaved route or path from a public highway or public road to a well site or associated facility.

"Administrator" means the Administrator of the Virginia Council on the Environment.

"Associated facilities" means any facility used for gas or oil operations in the Commonwealth, other than a well or well site.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III of "VR 173-02-01: Chesapeake Bay Preservation Area Designation and Management Regulations and § 10.1-2109 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area consists of Resource Protection Areas and Resource Management Areas.

"Council" means the Virginia Council on the Environment as described in section 10.1-1200 et seq. of the Code of Virginia.

"Council member agencies" means those agencies designated as members of the Council in § 10.1-1202 of the Code of Virginia.

"Cuttings" means fragments of rock produced in a well bore by a drill bit and brought to the surface by drilling fluids or air pressure.

"Department" means the Department of Mines, Minerals and Energy.

"Director" means the Director of the Department of Mines, Minerals and Energy or his authorized agent.

"Drilling fluid" means any fluid or drilling mud circulated in the well bore during drilling operations.

"Economic characteristics" means activities associated with the production, distribution and consumption of goods and services.

"Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid into the productive strata, (ii) application of pressure, heat or other means for the reduction of viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal pumping to increase the production of gas or oil from any well, wells or pool.

"Environment" means the natural, scenic and historic attributes of Virginia.

"Environmental impact assessment" or "Assessment" means that documentation which is required by § 62.1-195.1 of the Code of Virginia to be a part of any application for a permit to drill an oil or gas well in Tidewater Virginia.

"Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii) to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or (iii) to extend the limits of a known gas or oil reservoir.

"Facilities and equipment" means all surface infrastructure supporting the development, drilling, construction, completion or operation of any oil or gas operation including but not limited to well drilling equipment, well heads, separators, compressors, pumps, manifolds, vehicles, fluid circulation systems, waste handling facilities, valves, pipelines, etc. used to explore for, produce or transport oil or gas.

"Fiscal characteristics" means the structure of taxation, public revenue, public expenditure, and public debt.

"Gas" or "Natural gas" means all natural gas whether hydrocarbon or non-hydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen casing head gas and all other fluids not defined as oil.

"Gas well" means any well which produces or is likely to be capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula RKLS/T, as defined by the Food Security Act (F.S.A.) Manual of August, 1988 in the "Field Office Technical Guide" of the U.S. Department of Agriculture, Soil Conservation Service, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

"Highly permeable soils" means soils with a given potential to transmit water through the soil profile. Highly permeable soils are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches (permeability groups "rapid' and "very rapid") as found in the "National Soils Handbook" of July 1983 in the "Field Service Technical Guide" of the U.S.

Department of Agriculture, Soil Conservation Service.

"Historic properties" means any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the National Register of Historic Places or the Virginia Historical Landmarks Register including any artifacts, records and remains that are related to and located within such properties.

"Historic properties survey" means a survey undertaken to establish the presence or absence of historic properties, and any related and necessary management plans developed to conserve such resources.

"Land-Disturbing activity" means any change in or reconfiguration of the land surface or vegetation on the land surface through vegetation clearing or earth moving activities including but not limited to clearing, grading, excavating, drilling, transporting or filling.

"Mcf" means, when used with reference to natural gas, one thousand cubic feet of gas at an atmospheric pressure of 14.73 pounds per square inch and at a temperature of 60 degrees F.

"Natural area preserve" means a natural area that has been dedicated pursuant to § 10.1-213 of the Code of Virginia.

"Natural heritage resources" means the habitat of threatened or endangered plant or animal species, rare or significant natural communities or geological sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Natural heritage survey" means a survey undertaken to establish the presence or absence of natural heritage resources, and any related and necessary management plans developed to conserve such resources.

"Non-tidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and which meet the technical criteria and field standards for wetlands set forth in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands."

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the under ground reservoir.

"Oil or Gas Operation" or "Operation" means any activity relating to drilling, re-drilling, deepening, stimulating, production, enhanced recovery, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another, plugging or re-plugging any well, ground disturbing activity relating to the development, construction, operation and abandonment of a gathering pipeline, the development, operation, maintenance and restoration of any site involved with oil or gas operations, or any work undertaken at a facility used for gas or oil operations. The term embraces all of the land or property that is used for or which contributes directly or indirectly to operations, including all roads. § 62.1-195.1 requires an assessment to address production and transportation activities associated with oil or gas operations. Therefore, the definition also includes, for the purposes of this regulation, any activities relating to the development, construction, operation, maintenance, abandonment and restoration of pipeline systems, production facilities, and processing facilities; and transportation activities conducted for the purpose of moving oil, gas, wastes, supplies or equipment from one location to another.

"Oil well" means any well which produces or is likely to be capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Operations area" means the location of the well, well site, associated facilities, production facilities, access roads, pipeline systems, and other related facilities and equipment necessary to the conduct of oil or gas operations.

"Person" means any corporation, association, or partnership, one or more individuals, or any unit of government or agency thereof.

"Pipeline systems" means all parts of those physical facilities through which gas or oil moves in transportation, including but not limited to pipes, valves, and other appurtenances attached to pipes such as compressor units, metering stations, regulator stations, delivery stations, holders, or other related facilities.

"Pipeline corridor" means those areas which pipeline systems pass through or will be constructed to pass through, including associated easements, leases, or rights-of-way.

"Production well" means a well, related production facilities and equipment and activities related to the drilling of a well for the purpose of developing and producing, or converting an exploratory well to develop or produce, oil and gas from geological strata for the purpose of sale, exchange, transfer or use by the owner or for the purpose of exchange, transfer, sale or use by any other person.

"Rare, threatened or endangered species" means any insect, fish, wildlife or plant species which is listed as, is a candidate for listing as, or is recommended for listing as a rare, threatened or endangered species by the U.S. Fish and Wildlife Service, the Department of Agriculture and Consumer Services, the Department of Game and Inland

Fisheries, or the Department of Conservation and Recreation.

"Scenic resources" means features which characterize an area by giving it a special visual identity or which present unique vistas or landscapes, including but not limited to such features as designated or candidate state or federal scenic rivers, federal or state scenic highways or parkways, Virginia byways, and scenic values as recognized by local, state or federal governments.

"Tidal wetlands" means "vegetated wetlands" and "nonvegetated wetlands" as defined in § 62.1-13.2 of the Code of Virginia.

"Tidewater Virginia" means that area of Virginia as defined in § 10.1-2101 of the Code of Virginia and the localities of Manassas and Manassas Park.

"Virginia Outdoors Plan" means the State Comprehensive Outdoor Plan administered by the Department of Conservation and Recreation.

"Waste fluids" means water and other liquids resulting from or produced by the development, drilling, construction, completion or operation of oil or gas operations and which contain or which may contain minerals, salts, oil or other hydrocarbons, sediment, and other chemical or physical constituents, and which include but are not limited to produced fluids, spent drilling fluids, fracturing fluids, and rigwash waters, etc.

"Well bore" means any shaft or hole drilled, bored or dug to explore for or to produce oil or gas.

§ 2. Authority.

This regulation implements § 62.1-195.1 of the Code of Virginia which requires the Council on the Environment to develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments for oil or gas well drilling operations in Tidewater Virginia.

§ 3. Purpose.

The purpose of this regulation is to set out criteria and procedures to be followed by oil or gas well drilling permit applicants when preparing environmental impact assessments and by the Administrator, the Council and its member agencies, other state agencies, local government officials, and the public when reviewing environmental impact assessments. It is intended to foster the development of useful information which is presented in a manner that assists the Administrator, Council and its member agencies, appropriate state agencies, Planning District Commissions, potentially affected local governments, and the public in understanding, analyzing and making decisions about the potential environmental, fiscal or economic impacts associated with drilling an oil or gas well in Tidewater Virginia and related production and transportation activities.

§ 4. Applicability.

A. The environmental impact assessment requirements and criteria apply to all oil or gas well drilling operations, whether an exploratory well or a production well, proposed to occur in Tidewater Virginia. Any person proposing to drill an exploratory well or production well in Tidewater Virginia shall submit to the Department, as part of his application for a permit to drill such a well, an environmental impact assessment.

B. If the permit application is for an exploratory well, the assessment shall comply with the requirements and criteria contained in Article 2 of this regulation. If the application is for a production well, the assessment shall meet all information requirements and criteria contained in Article 2 and Article 3.

§ 5. General information requirements.

A. The environmental impact assessment is to contain information on and a discussion of the elements outlined in the following sections of this regulation. Discussions should be no longer than necessary to fully explain the issues and potential impacts in a given topical area. Data and analyses should be commensurate with the degree of impact.

B. An environmental impact assessment shall contain a title page, an executive summary, a table of contents, a list of figures, a list of tables, a list of maps and plats, the main body of the report as outlined in this regulation, a list of preparers, a topical index, an annex containing a list of local, state, or federal permits that are applicable to the proposed operations, and other annexes as needed. The executive summary shall summarize the assessment focusing on the major conclusions, the potential environmental, fiscal and economic impacts, and avoidance, minimization or mitigative measures proposed to address environmental, fiscal and economic impacts.

C. Where information contained in the permit application or any supporting documentation satisfies any of the criteria contained in this regulation, the applicant may choose to submit the permit application or supporting documents or any part thereof rather than repeat the information in the assessment. If a permit application or related documents are submitted to fulfill specific information requirements of this regulation, the appropriate information shall be clearly referenced in the assessment.

Article 2 - Information Requirements for Exploratory Wells

§ 6. Description of the oil or gas operation.

A. The applicant shall describe the oil or gas operation to be performed. The description of the oil or gas operation should include information on the location, size

(length, height, width and area), and number of such facilities and related land requirements (including easements or rights-of-way). The information should also include a timetable for establishing, completing and removing drilling operations and constructing, operating and removing production facilities.

B. The discussion of the oil and gas operation shall be accompanied by:

1. a general location map depicting the operations area and surrounding areas at a map scale which is as detailed or more detailed than a map at a scale of 1:24000; and

2. detailed site plat(s) of the proposed operations area at a scale no greater than 1:600 depicting the location of:

a. proposed land-disturbing activities,

b. facilities and equipment, pipeline corridors, and natural resource features discussed in section 7 that will be or could be affected by proposed operations,

c. any existing manmade features within the proposed operations area, including but not limited to buildings, water wells, roads, drainage ditches, ponds, etc.

C. The description of gas and oil operations shall include a discussion of the following:

1. the type of drilling operation;

2. power systems, energy or fuel sources necessary for drilling and associated facilities equipment operation;

3. fluid circulation systems including a discussion of and a list of the proposed drilling fluids, fluid components, toxicity classification, and information on the projected amount and rate of drilling fluid production;

4. well control and blowout prevention devices including a description of the proposed methods of containment of potential oil, gas or waste fluid releases;

5. any proposed utility connections for water supply or sewage disposal purposes;

6. projected types, quantities, and chemical characteristics of waste fluids, including any planned surface water or groundwater emissions;

7. projected types, quantities, and chemical characteristics of solid wastes produced by oil or gas operations;

8. proposed on-site and off-site solid and liquid waste management procedures including waste transfer areas and procedures, disposal areas or facilities, handling facilities and equipment, storage areas and related facilities and equipment, and proposed methods of disposal whether by land application, burying, injection or by other means;

9. proposed environmental protection features and devices which will enhance the safety of the proposed operations;

10. projected air emissions by type, quantity, and duration resulting from proposed operations on an average daily basis;

11. methods which will be used to acquire necessary water supplies to conduct proposed operations including the amount of daily withdrawals, daily or weekly fluctuations in withdrawal rates, duration of withdrawals, and any effects on stream flow, how much water will be needed to support operations, and how such water supplies will be used in the proposed operations;

12. descriptions, presented in narrative and graphic format as appropriate, of proposed erosion and sediment control practices and stormwater management practices which will be installed to manage surface water quality; and

13. descriptions, presented in narrative and graphic format as appropriate, of proposed site reclamation and revegetation plans for all operations areas.

D. A description of land-disturbing activities which will result from the proposed oil or gas operation should include a discussion of the size, extent and location of activities including the following activities:

1. the clearing of vegetation, including a description of the types of vegetation to be cleared;

2. land grading and filling activities;

3. constructing new or expanded access roads;

4. constructing fluid reserve pits, sumps, dikes, tanks or similar devices; and

5. constructing associated facilities whether inside or outside of the operations area.

§ 7. Description of the environment and natural resource features potentially affected by the oil or gas operation.

The discussion under this part shall include a description of the existing environment and natural resource features which will be or may be affected by the oil or gas operation and how they will be or may be affected. The analysis of the environment and natural resource features shall encompass, at the minimum, any

area located within 1320 feet of a proposed well and within 100 feet of proposed pipeline systems or associated facilities. The 1320 foot distance is half of the statewide well spacing requirement set out for gas wells in § 45.1-361.17 and will ensure that the impact analysis for wells established in Tidewater Virginia at the statewide spacing will be tangential. The 100 foot distance from pipelines and associated facilities will ensure that Chesapeake Bay Preservation Areas or other environmentally sensitive resources that may be affected by the oil or gas operation will be detected. The potential for impacts by the proposed oil or gas operation on natural resource features and the environment which are located outside of the aforementioned area shall also be considered and discussed. The discussion shall be supported with graphic information in the form of a plat or plats at a scale between 1:1000 and 1:4000 showing the location of natural resources that will be or may be affected by the proposed operation. The discussion shall include, but not be limited to:

1. physical site conditions such as:

a. topographical features including relief, slope, project area elevation, and landscape features such as beaches, sand dunes, shorelines, etc.;

b. surface water hydrology and drainage patterns including locations of embayments, rivers or streams and related subaqueous beds, tidal or non-tidal wetlands, and the 100-year floodplain in the watershed potentially affected by the proposed operations;

c. existing surface water quality characteristics and how water quality may be affected by emissions from proposed oil or gas operations;

d. existing air quality and how air quality may be affected by emissions from proposed oil or gas operations;

e. geological conditions such as groundwater hydrogeology, including the depths to the top and bottom of groundwater aquifers; general characteristics of the geologic strata to be penetrated by drilling activities; and a discussion of the possibility for land subsidence and any potential impacts associated with land subsidence which may result from oil or gas operations;

f. a description of the existing water quality of groundwater aquifers which will be or may be affected by drilling activities or liquid waste disposal activities focusing particularly on the potability of water in potentially affected aquifers and the extent to which identified aquifers are currently used as domestic or community water supplies;

g. a discussion of the soil types on which oil or gas operations will be located including an identification of prime agricultural lands, highly permeable soils, highly erodible soils, and soil profile descriptions of each representative soil series on the well site to a depth of 72 inches;

h. the identification and location of any public water supply intakes within the watershed where oil or gas operations will occur and located within 10 miles downstream of the proposed well site; or any public or private water supply wells located within a one-mile radius of the proposed oil or gas well drilling operation; and

i. Chesapeake Bay Preservation Areas, both Resource Protection Areas (RPAs) and Resource Management Areas (RMAs), located within 1320 feet of the proposed operation area.

2. biological conditions and resources including but not limited to:

a. a description of the terrestrial and aquatic habitat types and associated flora and fauna, including any natural heritage resources which are documented by performing a natural heritage survey in conformance with methodologies established by the Department of Conservation and Recreation, and any rare, threatened or endangered species present;

b. a description of the use patterns of terrestrial habitat by wildlife including areas such as nesting, roosting, breeding and calving areas or other unique natural habitat;

c. a description of the use patterns of freshwater, estuarine and marine habitat by terrestrial and aquatic species, including but not limited to submerged aquatic vegetation, fish spawning areas, shellfish beds, habitat of anadromous fish and other finfish, and benthic organisms; and

d. State Wildlife Management Areas, State Natural Area Preserves, National Wildlife Refugees, or elements of Virginia's National Estuarine Research Reserve System or other unique or important natural communities.

3. culturally important areas such as historical and recreational resources, including those resources listed in the Virginia Outdoors Plan, including but not limited to:

a. historic properties which are documented by performing a historic properties survey in conformance with guidelines established by the Department of Historic Resources;

b. public beaches;

c. scenic resources;

d. public water access sites;

e. local, state, or national parks, recreational areas or forests;

f. state-owned or state managed lands;

g. federally-owned or federally managed lands;

h. easements held for agricultural, forestal, open space, horticultural or other conservation purposes; and

i. prime agricultural lands as identified by the U.S. Soil Conservation Service and important farm lands as identified by the Virginia Department of Agriculture and Consumer Services.

B. Describe the typical noise levels currently existing at the proposed operations areas. Describe any oil or gas operation activities that will produce noise over 65 decibels measured at the boundary of the operations area, the source and daily duration of those activities producing the noise, and the estimated external noise level at the nearest noise receptor such as a residence, school, hospital, business, public meeting place, feature identified in the Virginia Outdoors Plan, or wildlife habitat. The applicant should describe what measures will be taken to reduce projected exterior noise levels below 65 decibels at the nearest receptor.

C. Describe any activities associated with the oil or gas operation that will produce light or glare within the operations area after sundown and before dawn. Describe the hours that artificial lighting sources will exist, including flaring of wells, gas processing facilities, or production facilities, the intensity of any light sources, and the time such light sources would be in operation. Describe the potential aesthetic, nuisance, safety, or environmental hazards that light or glare may produce outside of the operations area. Describe any steps that will be taken to minimize light or glare.

D. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on natural, scenic, recreational, and historic resources identified in the assessment. The assessment shall also discuss irrevocable or irreversible losses of the natural resources identified in the assessment.

§ 8. Procedures for estimating the probability of a discharge.

A. The assessment shall provide an analysis of the probabilities of accidental discharges of oil, condensate, natural gas, and waste or other liquids being released into the environment during drilling, production, and transportation due to well blowout, equipment failure, transportation accidents and other reasons. Such an analysis shall include calculations based upon generally accepted engineering failure analysis procedures. An applicant shall calculate a spill probability analysis for three sizes of discharge events -- minor, moderate, or major. The applicant shall define the categories of minor, moderate or major discharge and describe the sources of information used to formulate the analyses and the assumptions used to construct the analyses. Discharge probability analyses for minor discharges should include calculations for a discharge that would not be expected to escape the operations area.

§ 9. Procedures for determining the consequences of a discharge.

The environmental impact assessment shall include a description of potential environmental and natural resource effects associated with discharges including the consequences of a discharge on finfish, shellfish and other marine or freshwater organisms; birds and other wildlife; air and water quality; and land and water resources. The spill analysis shall be completed for oil, condensate, waste or other fluids, and natural gas discharges resulting from minor, moderate or major discharges as defined and described pursuant to the requirements of § 8.

§ 10. Spill release and contingency planning.

A. The environmental impact assessment shall describe procedures which will be developed and implemented to prepare for, equipment which will be installed to detect and respond to, and facilities and equipment which will be installed to contain minor, moderate and major discharges of oil, condensate, natural gas, waste or other fluids as defined pursuant to the requirements of § 8 as well as fires or other hazards to the environment. A Spill Prevention Control and Countermeasure Plan prepared in conformance with the requirements of Title 40, Code of Federal Regulations, Part 112 (40 CFR Part 112) may be submitted to fulfill the information requirements of this section.

B. Such discussions should describe the following:

1. Safety devices which will be installed to ensure early detection of accidental or unexpected discharges from oil or gas operations involving fuels, oil, gas or wastes, and a timetable for inspecting and maintaining discharge detection and response equipment, pipeline systems and other equipment and facilities.

2. Identification of:

a. response equipment, supplies and materials available from the operator, selected private contractors or local or regional emergency response sources such as public fire or rescue services;

b. projected response times by identified response personnel;

c. proposed discharge emergency notification system including designation of individuals and alternates

who will provide the notice of a release and the identification of those agencies or individuals who will be notified in the event of a release;

d. responsible private, local, state, or federal emergency response personnel and the needs and requirements of these groups regarding information on hazardous and flammable materials, regardless of materials weight or volume, used or stored in the project area; and

e. information on a discharge response strategy to be followed by the operator, his employees, private response contractors, and local, state, or federal response personnel for emergency situations that may arise in connection with oil or gas operations.

3. Specific actions to be taken if a discharge is discovered including:

a. designation of a response coordinator who will be responsible for directing spill response operations;

b. designation of a location for a discharge response operations center and provision of a reliable communications system for directing response operations;

c. designation of the operator's employee responsibilities in case of a release event and a discussion of the training employees will receive to ensure they are capable of handling assigned responsibilities; and

d. provisions for the clean-up, abatement and/or disposal of discharged materials including oil, produced waters, wastes, contaminated materials used in response activities, or materials affected and contaminated by the discharge.

§ 11. Hydrogen sulfide release contingency planning.

A. A discussion of the potential for encountering hydrogen sulfide shall be included in the assessment. The assessment shall discuss steps that will be taken to respond if indicators of such gas are encountered, if there exists a potential for a release of hydrogen sulfide gas, or in the event of a hydrogen sulfide release. A hydrogen sulfide contingency plan prepared in conformance with requirements set forth by the Department by regulation may be submitted if it meets the criteria set forth in this section.

B. A hydrogen sulfide release contingency plan should address the following:

1. methods and devices that will be used to detect hydrogen sulfide gas to prevent the gas from becoming an environmental concern. Include a description of detection equipment to be used and equipment testing and calibration procedures.

2. operating procedures to be employed if the operations area atmospheric concentration of hydrogen sulfide gas reaches 1) 5 ppm (7 mg/m^3), 2) 10 ppm (14 mg/m^3), and 3) 25 ppm (35 mg/m^3) and including a discussion of:

a. appropriate emergency notification procedures for local residents, emergency service and medical personnel;

b. notification procedures for responsible regulatory agencies; and

c. appropriate visual and audible warning systems for excursions of atmospheric hydrogen sulfide gas above 5 ppm (7 mg/m^3) within the operations area.

3. The potential for low-level hydrogen sulfide emmissions (one hour average) to result in concentrations in areas of public access above levels deemed harmful to human health. Provide an air quality screening analysis of the effects of low-level hydrogen sulfide emissions on ambient air from designed emission points and from likely upset events.

§ 12. Economic impacts.

A. Describe the potential impacts of the proposed oil or gas operation on the economic characteristics of the affected locality and, as necessary, surrounding localities. The information should address how these economic characteristics will be affected during 1) the drilling and construction phases of oil or gas operations, and 2) the production phases of oil or gas operations. In all projections constructed by the applicant, the methodology for constructing projections and the assumptions, calculations and computations used to formulate projections should also be presented and described.

B. The description should include information on the following conditions:

1. an analysis of the potential positive or negative effects of the proposed oil or gas operation on the current population with regard to potential changes in the demographic structure of the locality according to age, income and employment characteristics;

2. an analysis of the projected employment levels including estimates of the variation in employment levels over time for 1) the drilling and construction phases of the oil and gas operation, including the construction of pipeline systems, associated facilities and production facilities, and 2) the production phases of the proposed operation. Indicate whether any new positions created by the proposed construction and operations activities may be or will be filled from the labor pool available in the affected locality or in neighboring localities;

3. the types of services that can be provided from

businesses located in the affected locality or in surrounding localities. Include a general estimate of the amount of contract awards that will be or could be made available to service providers in the affected locality and neighboring localities and the projected duration of service contracts;

4. the existing land uses, including residential, forestal, agricultural, commercial, industrial, urban, suburban, open space, recreational or other land use characteristics within the locality that will be affected, changed or which may be subject to change as a result of the proposed oil or gas operation. The discussion shall be supported with graphic information in the form of a plat or plats of existing land uses within 1320 feet of the well and within 100 feet of associated facilities and pipeline systems at a scale between 1:1000 and 1:4000; and

5. the affected locality's industrial and commercial bases and economic conditions with emphasis on dominant economic sectors (i.e. agriculture, forestry, fishing and aquaculture, service industries, and industrial activities.) Special attention should be given to the tourism and recreation industries and how they may be affected by the oil or gas operation. Describe how the proposed location of the oil or gas operation may adversely affect or displace other natural resource-based commercial activities and enterprises in the affected locality or in neighboring localities such as agriculture, fishing, tourism, forestry, etc.

C. Describe the actions and measures that will be taken to avoid impacts, minimize impacts, and mitigate unavoidable impacts on economic characteristics identified in the assessment.

§ 13. Fiscal impacts.

A. The assessment should present an analysis of the existing fiscal characteristics and physical infrastructure in the county, city, or town where the proposed oil and gas operations are to be located and how they may be affected by the proposed oil or gas operation. In all projections of potential effects on infrastructure and related fiscal impacts, methodologies for constructing projections, related assumptions, calculations and computations used to formulate projections should also be presented and described.

B. The assessment should address the following fiscal and infrastructure elements:

1. the transportation systems including roads, railroads or existing oil or gas pipelines that are available to support the oil or gas operation and how they will be affected by the proposed oil or gas operation. The discussion should include an estimate of the number of vehicle trips that will be generated on the transportation system, the size of any operational support vehicles, and the design capacity of affected roads relative to the projected size, weight and volume of vehicle traffic.

2. infrastructure and capital facility support systems available including utility services, water services, sewer services, solid waste disposal services and facilities, etc. and the projected demands the proposed oil or gas operation will place on such systems and their existing capacity to respond to that demand. Identify any needed upgrades or expansion of related infrastructure, equipment or services, estimate the cost of providing upgrades, and describe how the applicant will assist in providing resources to met such needs;

3. the availability of public safety and health services such as hospitals, emergency rescue services, police and fire services and related infrastructure and the capacity to respond to accidents or incidents that may result from the oil or gas operation. Identify any needed upgrades or expansion of related infrastructure, equipment or services, estimate the cost of providing upgrades, and describe how the applicant will assist in providing resources to meet such needs;

4. the distribution of existing temporary and permanent housing units within the locality and whether these will be adequate to accommodate the projected influx of the oil or gas operation workers. Discuss how any need for temporary housing may affect existing land uses. Also, discuss how any projected housing needs will be met by the applicant if available units are insufficient to meet the projected housing demand; and

5. the public service needs, including but not limited to educational services, recreational needs, and social services, that will be generated by the immigration of laborers into the affected locality in support of the oil and gas operation. Discuss the capacity of these services and whether the existing capacity is sufficient to handle the projected population increase. If the existing capacity is projected to be insufficient to meet anticipated needs, the applicant should explain what measures will be necessary to address increased service needs.

C. Describe the actions and measures that will be taken to avoid, minimize, and mitigate impacts on fiscal characteristics identified in the assessment associated with the expansion or development of infrastructure to support the proposed oil and gas operation.

Article 3 - Information Requirements for Production Wells

§ 14. Information Requirements for Production Wells.

A. An environmental impact assessment describing a proposed production well shall address all of the criteria set forth in Article 2, §§ 6, 7, 8, 9, 10, 11, 12, and 13.

B. In addition to information required by § 14.A, the environmental impact assessment for a production well shall include a discussion of the following:

1. any planned enhanced recovery activities related to production of oil or gas from the proposed well;

2. any activities associated with the proposed well which will result in land-disturbing activities necessary to construct and install pipeline systems including proposed trenching, earth-moving, or vegetation clearing activities and a discussion of the size, extent, and location of proposed land-disturbing activities;

3. any activities associated with the proposed well which will result in land-disturbing activities necessary to construct and install oil or gas production facilities and equipment, including proposed trenching, earth-moving, or vegetation clearing activities and a discussion of the size, extent, and location of proposed land-disturbing activities;

4. the revenue structure, expenditure levels and financial capabilities of the affected local government and a projection of new services or expenditures that will be incurred by the local government as a result of the proposed oil or gas operation. The applicant should identify measures that may be necessary to expand or maintain services, revenue sources, expenditure levels, and capital needs of the affected local government due to the proposed oil or gas operation;

5. a description of new transportation systems necessary to support development and production activities, including any new pipeline systems and roads, the person who will be responsible for constructing and/or installing new pipelines systems or new or upgraded public roads, how much upgrades may cost, and how the applicant may assist in developing and upgrading necessary transportation systems; and

6. a description of any new, upgraded or expanded infrastructure and capital facilities that will be necessary to support the proposed oil or gas production operations, estimates of how much upgrades may cost, and the persons or persons who will be responsible for providing any necessary infrastructure or capital facilities.

§ 15. Examination of secondary environmental impacts due to induced economic development.

Based on the analysis of potential economic impacts identified in § 12, fiscal impacts identified in § 13, and impacts associated with production addressed in § 14, examine and discuss the potential secondary environmental affects of induced economic development due to the proposed oil or gas operation. Such analysis should include impacts associated with any new infrastructure development provided to support the oil or gas operation including but not limited to the construction of new roads, sewers, schools, water supplies, public services, waste handling facilities, housing units, etc. on natural, scenic, recreational, and historic resources.

Article 4 – Council Member Agency and General Public Review and Comment Procedures

§ 16. Council notification by the Department.

Upon receiving an environmental impact assessment for an oil or gas well drilling operation in Tidewater Virginia, the Director shall notify the Administrator that a coordinated review must be initiated. The applicant shall provide the Department with 17 copies of the environmental impact assessment and the Department will deliver the copies to the Administrator. The 90-day review process will begin upon receipt of the appropriate number of copies of the environmental impact assessment by the Administrator.

§ 17. Initiation of assessment review by state and local agencies and by the general public.

A. The Administrator shall prepare and submit a general notice for publication in the Virginia Register within three days of the receipt of an environmental impact assessment. The availability of an assessment shall be given public notice, paid for by the applicant, by publication in a daily newspaper having a genera circulation in the locality where drilling is proposed. The Administrator shall also develop a mailing list containing the names of persons who indicate they want to be notified about the availability of oil or gas environmental impact assessment documents and will forward a copy of the general notice submitted for publication in the Virginia Register to those persons on the mailing list.

B. The general notice will contain the following information:

1. the proposed location of the oil or gas operations including the name of the locality and other general descriptive information regarding the location of the proposed operation,

2. a general description of the proposed operation,

3. the deadline for the general public to submit written comments, which shall not be less than 30 calendar days after publication of the notice,

4. a designated location where the environmental impact assessment can be reviewed,

5. a contact person from whom additional information can be obtained on the environmental impact assessment, and

6. an address for mailing comments on an assessmen

to the Administrator.

C. The Administrator shall submit copies of the environmental impact assessment to all Council member agencies, to the chief executive officer of the affected local government, to the Executive Director of the affected Planning District Commission, and to other state or local agencies requesting a copy of the assessment. Council member agencies shall provide their cooperation in reviewing environmental impact assessments submitted by applicants. State agency comments shall be returned to the Administrator as soon as possible but no later than fifty calendar days after receiving a copy of an assessment from the Administrator.

D. The Administrator may decide, in consultation with the Director, to hold a public information hearing on an impact assessment. Such a public hearing, if any, shall be held during the public comment period in the locality in which the operation is proposed. Notice of such a hearing, including the date, time, and location of the meeting, will be announced in a general notice published in the Virginia Register and in a notice mailed to persons on the mailing list.

§ 18. Review of comments.

The Administrator shall review all written state agency, local government, Planning District Commission, and public comments and any written or oral comments received during any public hearing. based on the Administrator's review of written comments, oral and written comments received at public hearings, and the environmental impact assessment, the Administrator will prepare and submit a written report to the Director. The written report will contain findings and recommendations for conditions suggested for inclusion in the permit to drill issued by the Department. The Administrator's findings and recommendations on an assessment will be available for public inspection at the offices of the Council.

The Council on the Environment will receive, consider and respond to petitions by any interested persons at any time with respect to reconsideration or revision of this regulation.

The effective date of this regulation shall be the date upon which it is filed with the Virginia Registrar of Regulations.

Adopted June 25, 1991

/s/ Marie W. Ridder, Chairman
Council on the Environment

I attest on this day, June 25, 1991, that the above regulation was adopted on June 25, 1991.

/s/ Keith J. Buttleman, Administrator
Council on the Environment

Approved this 24th day of June, 1991.

/s/ Elizabeth H. Haskell
Secretary of Natural Resources

Approved this 24th day of June, 1991.

/s/ Lawrence Douglas Wilder
Governor

Filed with the Registrar of Regulations this 26th day of June, 1991.

/s/ Joan W. Smith
Registrar of Regulations

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: **VR 355-28-300. Regulations for the Immunization of School Children.**

Statutory Authority: §§ 32.1-12 and 22.1-271.2 of the Code of Virginia.

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

Emergency regulations are promulgated in order that:

(1) All children enrolling in kindergarten or first grade for the first time in 1991 and thereafter, shall have documentary proof of having received two doses of measles vaccine. (In schools that have no kindergarten, documentary proof will be required of students enrolling in first grade. In schools that have both kindergarten and first grade, it will be required of kindergarten enrollees only.)

2. All children up to 30 months of age enrolling in day care centers as of January 1, 1992 and thereafter, shall have documentary proof of immunization against Haemophilus influenzae type b (Hib) in accordance with the recommendations of the American Academy of Pediatrics or the Immunization Practices Advisory Committee of the U.S. Public Health Service.

Recommendation:

The Presidents of the Virginia Chapter, American Academy of Pediatrics and the Virginia Academy of Family Physicians (VAFP) have expressed support for this emergency regulation. Doctor Michael Dickens, President of the Virginia Chapter, AAP, and Doctor Harold Markham representing the VAFP were members of an Ad Hoc Committee that met with representatives of the Department of Health on May 22, to discuss the subject of implementing Senate Bill 548. Both physicians strongly encouraged implementing the requirements for the second dose of measles

vaccine and the Hib vaccine series through an emergency regulation as recommended here.

Request:

Made by Health Commissioner, C.M.G. Buttery, M.D., M.P.H., pursuant to Senate Bill 548 enacted by the 1991 General Assembly. This bill amends Section 32.1-46 of the Code to make it consistent with current recommendations of the Immunization Practices Advisory Committee of the U.S. Public Health Service.

/s/ C. M. G. Buttery, M.D., M.P.H.
State Health Commissioner
Date: June 4, 1991

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 21, 1991

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1991

/s/ Joan W. Smith
Registrar of Regulations
Date: June 26, 1991

Background:

The 1991 Code change to provide for a routine two-dose schedule of measles vaccine is intended to stem the recent increase in the number of cases of measles in Virginia as well as the nation. The following summary of reported measles cases illustrates this increase:

	Virginia	United States	
1984	5	2,587	
1985	28	2,822	
1986	60	6,282	
1987	1	3,655	
1988	239	3,396	
1989	22	17,800	
1990	86	*29,805	(97 deaths)
1991	21	*4,317	(to date)

*provisional data

In March this year, an outbreak of measles at the Medical College of Virginia (MCV) resulted in over 3,250 measles-susceptible employees at MCV being immunized against measles. At about the same time, a teenager in a juvenile detention center and a student in an elementary school in Richmond developed measles, requiring the immunization of all measles-susceptible persons who were exposed to either of these cases. The resurgence of measles is cause for concern, and an emergency regulation to enforce the Public Health Service recommendation before the start of the 1991 school year is important. The 6 to 8 months required to enact this regulation in the usual manner would delay implementation of the law and could result in the occurrence of many more cases of measles in Virginia.

While Haemophilus influenzae type b (Hib) disease is not as contagious as measles and rarely results in epidemics, its consequences are usually more serious (especially in children under 2 years of age). The most serious Hib disease is meningitis (inflammation of the membrane that covers the brain). About 12,000 cases of Hib meningitis are reported in the nation each year, and about 90% of these occur in children under 2 years of age. In Virginia, 81 cases of Hib meningitis were reported in 1989, and 41 in 1990. About 1 in every 20 with Hib meningitis dies and about 1 in 4 survivors has some degree of neurological impairment such as hearing loss. Hib can also cause pneumonia and infection of blood, bone, joints, soft tissues, etc. Hib vaccine is very safe and effective, and the Ad Hoc Committee concluded that it is crucial that every effort be made to prevent the disease through early implementation of the new requirements. The Committee also recognized that because Hib vaccine is administered in a series of three or four injections (depending on the vaccine manufacturer), it may result in confusion for lay persons in day care centers who will review immunization records to ensure compliance with vaccine requirements. Accordingly, the Committee devised the attached form which should be easily understood by lay persons.

Who will benefit:

1. Children - because it will require them to have the best available protection against measles and Hib as a prerequisite for admission to school or day care center respectively.

2. Schools - because they are considerably less likely to experience the disruption of day-to-day activities caused by measles outbreaks.

3. Day care centers - because they are considerably less likely to experience the disruption of day-to-day activities caused by Hib disease in a child. A case of Hib disease in a day care center usually calls for the administration of the drug rifampin to close contacts of such a child. Administering rifampin is time consuming and inconvenient for day care centers, local health departments, and the physicians of these children, and can be easily prevented by the expeditious enforcement of the Hib vaccine requirements.

Who will be inconvenienced:

1. School officials - but only during 1991 as they learn to implement the revised requirements for measles immunization.

2. Day care center officials - but only during 1991 as they learn to implement the requirements for Hib immunization.

3. Physicians who have already "certified" students as being in compliance with current measles vaccine requirements (one dose at age 12 months or older). They will need to recall such children for administration of the second dose. A few physicians have complained that this will be an inconvenience to them. Many physicians have been administering Hib vaccine without documenting on the Board of Health's immunization form, because it is currently not a requirement for enrolling in day care. Also, when the form was promulgated in 1983, a place for Hib vaccine was not designated because the vaccine had not been licensed. Therefore, as a temporary measure and until the Board of Health revises the current immunization form, it will be necessary to print copies of the attached form to document immunization against Hib disease for children enrolling in day care in 1991.

Some physicians may still be inconvenienced because of insufficient time to administer the vaccines to certain children, not to mention the time required for documenting these on the immunization form. The burdens of such physicians can, however, be minimized by the flexibility of conditional enrollment permitted by Section 4.01.03 of the current school immunization regulations. This Section gives the physician an additional 90 calendar days to administer immunizations he may not have had time to administer. For example, a child who has received only one dose of measles vaccine will not be denied admission to school if the physician certifies that the second dose will be given within the next 90 calendar days. The regulations also permit medical and religious exemptions. Leadership in the AAP and VAFP understand the flexibility permitted by conditional enrollment and expect it to be of assistance in the first year implementation of these new requirements.

Fiscal/Budgetary Impact:

No additional state funds will be required to implement this emergency regulation. We have adequate supplied of measles and Hib vaccines for immunizing the children cared for in local health departments.

VR 355-28-300. Regulations for the Immunization of School Children.

~~2.00~~

Part I

DEFINITIONS

~~2.01 General As used in these regulations, the words and terms hereinafter set forth have meanings respectively set forth unless the context requires a different meaning.~~ *§ 1.0 The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise*

~~2.02 Definitions~~

~~2.02.01~~ *"Adequate Immunization"* means

a. For currently enrolled students, the immunization requirements prescribed under Section 3.01.

b. For new students, the immunization requirements prescribed under Section 3.02.

~~2.02.02~~ *"Admit or Admission"* means the official enrollment or reenrollment for attendance at any grade level, whether full-time or part-time, of any student by any school.

~~2.02.03~~ *"Admitting Official"* means the school principal or his designated representative if a public school; if a non-public school or child care center, the principal, headmaster or director of the school or center.

~~2.02.04~~ *"Board"* means the State Board of Health.

~~2.02.05~~ *"Commissioner"* means the State Health Commissioner.

~~2.02.06~~ *"Compliance"* means the completion of the immunization requirements appropriate to either category of student, currently enrolled or new, required under Section 3.00.

~~2.02.07~~ *"Conditional Enrollment"* means the enrollment of a student for a period of ~~ninety~~ 90 days contingent upon the student having received at least one dose of each of the required vaccines and the student possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing ~~ninety~~ 90 days.

~~2.02.08~~ *"Currently Enrolled Student"* means any person less than ~~twenty~~ 20 years of age who enrolled in any Virginia school for the first time prior to July 1, 1983. Any currently enrolled student transferring from one school to another within the Commonwealth shall continue to be a currently enrolled student for the purposes of these regulations.

~~2.02.09~~ *"Documentary Proof"* means

a. For currently enrolled students, any document signed by a physician or official of a local health department, or a document excerpted from the student's immunization records by an admitting official prior to July 1, 1983. This document may be Form MCH 213B.

b. For new students, an appropriately completed copy of Form MCH 213B *and the temporary certification form for Haemophilus influenzae type b disease where applicable,* signed by a physician or his designee or an official of a local health department; except that for a new student transferring from an out-of-state school, any immunization record, which contains the exact date (month/day/year) of administration of each of the required doses of vaccines *when indicated* and complies fully with the requirements prescribed under Section 3.02 shall be acceptable.

~~2.02.10~~ *"Immunization"* means a treatment which renders an individual less susceptible to the pathologic effects of a disease or provides a measure of protection against the disease (e.g., inoculation, vaccination).

~~2.02.11~~ *"New Student"* means any person less than ~~twenty~~ 20 years ofage who seeks for the first time, admission to any Virginia school, or for whom admission to any Virginia school is sought by a parent or guardian, after July 1, 1983.

~~2.02.12~~ *"Physician"* means any person licensed to practice medicine in any of the ~~fifty~~ *50* states or the District of Columbia.

~~2.02.13~~ *"School"* means

a. Any public school from kindergarten through grade ~~twelve~~ *12* operated under the authority of any locality within this Commonwealth.

b. Any private or parochial school that offers instruction at any level or grade from kindergarten through grade ~~twelve~~ *12*

c. Any private or parochial nursery school or preschool, or any private or parochial child care center licensed by this Commonwealth; and

d. Any preschool handicapped classes or Head Start classes operated by the school divisions within this Commonwealth.

~~2.02.14~~ *"Twelve Months of Age"* means the ~~three hundred and sixty-~~ ~~fifth~~ 365th day following the date of birth.

~~1.00~~

Part II

GENERAL INFORMATION

~~1.00~~ *§ 2.0* Authority -

§ 22.1-271.2 of the Code of Virginia (1950) as amended pertains to immunization requirements for attending a school or licensed child care center in the Commonwealth. § 22.1-271.1 deals with the definitions necessary to implement § 22.1-271.2. § 22.1-271.2 directs the Board of Health to promulgate regulations for implementing this section in congruence with the Board's regulations promulgated under § 32.1-46. These are the Regulations for the Reporting and Control of Diseases promulgated by the Board and effective August 1, 1980. § 32.1-12 of the Code empowers the Board of Health with the authority to adopt regulations. These regulations have been promulgated in cooperation with the State Board of Education.

~~1.01~~ *§ 2.1* Purpose -

These regulations are designed to ensure that all students attending any public, private or parochial school and all attendees of licensed child care centers in the Commonwealth, are adequately immunized and protected against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, ~~and~~ mumps , *and haemophilus influenzae type b disease* as appropriate for the age of the student.

~~1.02~~ *§ 2.2* Administration -

~~1.02.01~~ *A.* State Board of Health - The Board of Health has the responsibility for promulgating regulations pertaining to the implementation of the school immunization law and standards of immunization by which a child attending a school or child care center may be judged to be adequately immunized.

~~1.02.02~~ *B.* State Health Commissioner - The State Health Commissioner is the Executive Officer for the State Board of Health with the authority of the Board when it is not in session, subject to the rules and regulations of the Board.

~~1.02.03~~ *C.* Local Health Director - The local health director is responsible for providing assistance in implementing these regulations to the school divisions in his jurisdiction and for providing immunizations to children determined not to be adequately immunized, who present themselves to the local health department for immunization.

~~1.02.04~~ *D.* Regional Medical Director - the regional medical director is responsible for coordinating the efforts of the local health department, school divisions and local medical societies within his region in implementing these regulations.

~~1.02.05~~ *E.* Admitting Officials - The school principals of public schools and the principals, headmasters and directors of non-public schools and child care centers are responsible for ensuring that each student attending their institutions provides documentary proof of immunization against the diseases listed in ~~section~~ ~~3.00~~ *Part III* of these regulations.

~~1.03~~ *§ 2.3* Application of Regulations - These regulations have general application throughout the Commonwealth.

~~1.04~~ *§ 2.4* Effective Date: ~~July 1, 1983~~ *July 1, 1991*

~~1.05~~ *§ 2.5* Application of the Administrative Process Act -

The provisions of the Virginia Administrative Process Act, contained in Chapter 1.1:1 of Title 9 of the Code, shall govern the adoption, amendment, modification and revision of these regulations, and the conduct of all proceedings and appeals hereunder.

~~1.06~~ *§ 2.6* Powers and Procedures of Regulations Not Exclusive -

The Board reserves the right to authorize a procedure for enforcement of these regulations which is not inconsistent with the provisions set forth herein and the provisions of Chapter 2 of Title 32.1 of the Code.

~~1.07~~ *§ 2.7* Severability - If any provision of these regulations or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of these regulations which can be given effect without the invalid provisions of the application, and to this end, the provisions of these regulations and the various applications thereof are declared to be severable.

~~1.08~~ *§ 2.8* Terminology - The use of terminology in these regulations indicating the male gender shall apply equally to the female gender.

~~3.00~~

Part III

IMMUNIZATION REQUIREMENTS

~~3.01~~ *§ 3.0* Immunization Requirements for Currently Enrolled Students - Every currently enrolled student shall provide, or shall have on file, in his mandatory permanent school record at the school to which he is seeking admission, documentary proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subsections, as appropriate for his age.

~~3.01.01~~ *A.* Diphtheria and Tetanus Toxoids and Pertussis Vaccine (DTP) - For students less than seven years of age, a minimum of three doses of DTP. If any of these three doses must be administered on or after the seventh birthday, Td (adult tetanus toxoid full dose and diphtheria toxoid reduced dose) should be used instead of DTP.

~~3.01.02~~ *B.* Poliomyelitis Vaccine - A minimum of three doses of trivalent oral poliomyelitis vaccine (OPV). Four ~~(4)~~ doses of inactivated poliomyelitis vaccine (IPV) shall be an acceptable alternative means of immunizing any child in whom the use of OPV is medically contraindicated.

~~3.01.03~~ *C.* Measles (Rubeola) Vaccine - A minimum of one dose of attenuated, (live) rubeola virus vaccine administered at age 12 months or older. Any measles immunization receive after 1968 should be considered to have been administered using a live virus vaccine.

~~3.01.04~~ *D.* German Measles (Rubella) Vaccine - A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

~~3.02~~ *§ 3.1* Immunization Requirements for New Students - Every new student and every child attending a licensed child care center shall provide documentary proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subsections, as appropriate for his age.

~~3.02.01~~ *A.* Diphtheria and Tetanus Toxoids and Pertussis Vaccine (DTP) - For students less than seven years of age, a minimum of three doses of DTP, with one dose administered after the student's fourth birthday. If any of these three doses must be administered on or after the seventh birthday, Td (adult tetanus toxoid full dose and diphtheria toxoid reduced dose) should be used instead of DTP.

~~3.02.02~~ *B.* Poliomyelitis Vaccine - A minimum of three doses of trivalent oral poliomyelitis vaccine (OPV), with one dose administered after the fourth birthday. Four (4) doses of inactivated poliomyelitis vaccine (IPV) shall be an acceptable alternative means of immunizing any child in whom the use of OPV is medically contraindicated.

~~3.02.03~~ *C.* Measles (Rubeola) Vaccine - A minimum of one dose of attenuated, (live) rubeola virus vaccine administered at age 12 months or older *, and a second dose administered prior to entering kindergarten or first grade, whichever occurs first.* Any measles immunization received after 1968 should be considered to have been administered using a live virus vaccine.

~~3.02.04~~ *D.* German Measles (Rubella) Vaccine - A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

~~3.02.05~~ *E.* Mumps Vaccine - A minimum of one dose of mumps virus vaccine administered at age 12 months or older.

F. Haemophilus Influenzae Type b (HIB) Vaccine - A complete series of Hib vaccine in accordance with current recommendations of the American Academy of Pediatrics or the U.S. Public Health Service for children 15 through 30 months of age, and age-appropriate doses for children younger than 15 months of age. The requirements for Hib vaccine shall become effective January 1, 1992.

~~3.03~~ *§ 3.2* Exemptions from Immunization Requirements -

~~3.03.01~~ *A.* Religious and Medical Exemptions - No certificate of immunization shall be required of any student for admission to school if:

~~a.~~ *1.* The student or his parent or guardian submits a Certificate of Religious Exemption (Form CRE 1), to the admitting official of the school to which the student is seeking admission. Form CRE 1 is an

affidavit stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. For a currently enrolled student any document present in the student's permanent school record claiming religious exemption, submitted prior to July 1, 1983, shall be acceptable for the purposes of school attendance, or

~~b.~~ *2.* The school has written certification from a physician or a local health department on Form MCH 213B that one or more of the required immunizations may be detrimental to the student's health. Such certification of medical exemption shall specify the nature and probable duration of the medical condition or circumstance that contraindicates immunization. For a currently enrolled student any document attesting to the fact that one or more of the required immunizations may be detrimental to the student's health shall be acceptable in lieu of Form MCH 213B.

~~3.03.02~~ *B.* Demonstration of Existing Immunity - The demonstration in a student of antibodies against either rubeola and or rubella, in sufficient quantity to ensure protection of that student against that disease, shall render that student exempt from the immunization requirements contained in Sections ~~3.01~~ *3.0* and ~~3.02~~ *3.1* for the disease against which he must be protected. Such protection should be demonstrated by means of a serological testing method appropriate for measuring protective antibodies against rubeola or rubella respectively.

~~4.00~~

Part IV

PROCEDURES AND RESPONSIBILITIES

~~4.01~~ *§ 4.0* Responsibilities of Admitting Officials

~~4.01.01~~ *A.* Procedures for Determining the Immunization Status of Students - Each admitting official or his designee shall review, ~~before the first day of the 1983-1984 school year, the school medical records of every currently enrolled and every new student seeking admission to his school. After the 1983-1984 school year, each admitting official or his designee shall review,~~ before the first day of each school year, the school medical record of every new student seeking admission to his school. Such review shall determine into which one of the following categories each student falls:

~~a.~~ *1.* Students whose immunizations are adequately documented and complete in conformance with Section ~~3.01~~ *3.0* or Section ~~3.02~~ *3.1.*

~~b.~~ *2.* Students who are exempt from the immunization requirements of Section ~~3.01~~ *3.0* or Section ~~3.02~~ *3.1* because of medical contraindications or religious beliefs provided for by Section ~~3.03~~ *3.2.*

~~c.~~ *3.* Students whose immunizations are inadequate according to the requirements of Section ~~3.01~~ *3.0* or Section ~~3.02~~ *3.1.*

~~d.~~ *4.* Students without any documentation of having been adequately immunized.

~~4.01.02~~ *B.* Notification of Deficiencies – Upon identification of the students in categories ~~c.~~ *3.* and ~~d.~~ *4.* under Section ~~4.02.01~~ *4.2.A.* , the admitting official shall notify the student or his parent or guardian:

~~a.~~ *1.* That there is no, or insufficient, documentary proof of adequate immunization in the student's school records.

~~b.~~ *2.* That the student cannot be admitted to school unless he has documentary proof that he is exempted from immunization requirements pursuant to Section ~~3.03~~ *3.2.*

~~c.~~ *3.* That the student may be immunized and receive certification by a licensed physician or an official of a local health department.

~~d.~~ *4.* How to contact the local health department to learn where and when it performs these services.

~~4.01.03~~ *C.* Conditional Enrollment - Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within ninety days, during which time that student shall complete the immunizations required under ~~Section~~ ~~3.00~~ *Part III.* Appendix D contains a suggested plan for ensuring the completion of these requirements within the ninety (90) day conditional enrollment period. The admitting official should examine the records of any conditionally enrolled student at regular intervals to ensure that such a student remains on schedule with his plan of completion.

~~4.01.04~~ *D.* Exclusion - The admitting official shall, at the end of the conditional enrollment period, exclude any student who is not in compliance with the immunization requirements under ~~Section~~ ~~3.00~~ *Part III* and who has not been granted an exemption under Section ~~3.03~~ *3.2* , until that student provides documentary proof that his immunization schedule has been completed, unless documentary proof, that a medical contraindication developed during the conditional enrollment period, is submitted.

~~4.01.05~~ *E.* Transfer of Records - The admitting official of every school shall be responsible for sending a student's immunization records or a copy thereof, along with his permanent academic or scholastic records, to the admitting official of the school to which a student is transferring within thirty (30) days of his transfer to the new school.

~~4.01.06~~ *F.* Report of Student Immunization Status - Each

admitting official shall, within 30 days of the beginning of each school year or entrance of a student, or by October 15 of each school year, file with the State Health Department through the health department for his locality, a report summarizing the immunization status of the students in his school. This report shall be filed on Form SIS 1, the Student Immunization Status Report (See Appendix F), and shall contain the number of students admitted to that school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted.

~~4.02~~ *§ 4.1* Responsibilities of Physicians and Local Health Departments - Every physician and or local health department, providing immunizations to a child, shall provide documentary proof, to the child or his parent or guardian, of all immunizations administered.

~~4.02.01~~ *A.* Currently Enrolled Students - Documentary proof of immunization for a currently enrolled student may be provided by the physician or official of a local health department by completing Form MCH 213B, recording the date each immunization was administered and signing Form MCH 213B in the appropriate location. In the case where a physician or local health department knows that a child has received the DTP, Td and/or OPV immunizations required under Section ~~3.01~~ *3.0* from another physician or health department, but the exact dates the immunizations were administered are not known, a physician or official of a local health department, may, where repeat immunizations are not believed indicated, certify on Form MCH 213B that a currently enrolled student is adequately immunized. Such method shall not be used to certify any student as adequately immunized against measles (rubeola) or German measles (rubella).

~~4.02.02~~ *B.* New Students - Only Form MCH 213B *and the temporary form for documenting immunizations against Hib* , appropriately completed and signed by a physician or his designee or an official of a local health department, shall be accepted by an admitting official as documentary proof of adequate immunization, except that for a student transferring from an out-of-state school to a Virginia school, the admitting official may accept as documentary proof any immunization record for that student which contains the exact date (month/day/year) of administration of each of the required doses of vaccines and which complies fully with the requirements prescribed under Section ~~3.02~~ *3.1* . Any immunization record which does not contain the month/day/year of administration of each of the required vaccine doses shall not be accepted by the admitting official as documentary proof of adequate immunization ; *with the exception of immunization against Hib.* ~~such~~ *Such* a student's record shall be evaluated by an official of the local health department who shall determine if that student is adequately immunized in accordance with the provisions of Section ~~3.02~~ *3.1* . Should the local health department determine that such a student is not adequately immunized, that student shall be referred to his private physician or local health department for any required immunizations.

~~5.00~~

Part V

Penalties

~~5.01~~ *§ 5.0* Exclusion of Students - Any student who fails to provide documentary proof of immunization in the manner prescribed, within the time periods provided for in these regulations and § 22.1-271.1 and § 22.1-271.2 of the Code of Virginia (1950) as amended, shall be excluded from school attendance by the school's admitting official.

~~5.02~~ *§ 5.1* Exclusion of Students Unprotected Against Vaccine-Preventable Diseases - In accordance with § 32.1-47 of the Code of Virginia (1950) as amended, any student exempted from immunization requirements pursuant to Section ~~3.03.01~~ *3.2 A.* of these regulations, shall be excluded from school attendance for his own protection until the danger has passed, if the Commissioner so orders such exclusion upon the identification of an outbreak, potential epidemic or epidemic of a vaccine-preventable disease in that student's school.

~~5.03~~ *§ 5.2* Responsibility of Parent to Have a Child Immunized - In accordance with § 32.1-46 of the Code of Virginia (1950) as amended, "the parent, guardian or person in loco parentis of each child within this Commonwealth shall cause such child to be immunized by vaccine against diphtheria, tetanus, whooping cough and poliomyelitis before such child attains the age of one year *, against Haemophilus influenzae type b before he attains the age of thirty months,* and against measles (rubeola), German measles (rubella) and mumps before such child attains the age of two years. *All children shall also be required to receive a second dose of measles vaccine prior to entering kindergarten or first grade.*

~~5.04~~ *§ 5.3* General Penalties - In accordance with § 32.1-27 of the Code of Virginia (1950) as amended, "any person, willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or Commissioner of any provision of this title (Title 32) shall be guilty of a Class 1 misdemeanor unless a different penalty is specified."

TEMPORARY CERTIFICATION FORM

**IMMUNIZATION AGAINST HAEMOPHILUS INFLUENZAE TYPE b (Hib)

*Please print or type the following:

NAME: _____ _____ ___
Last First MI

DATE OF BIRTH: |__|__|-|__|__|-|__|__|
mm dd yy

|__| Has received complete series of Hib vaccine in accordance with current recommendations of the AMERICAN ACADEMY OF PEDIATRICS OR THE U.S. PUBLIC HEALTH SERVICE.

|__| Has received the AGE-APPROPRIATE doses of Hib vaccine as recommended by the AMERICAN ACADEMY OF PEDIATRICS OR THE U.S. PUBLIC HEALTH SERVICE, the series will be completed on:

|__|__|-|__|__|-|__|__|
mm dd yy

|__| Hib vaccine is not indicated because this child has had Hib disease at 24 months of age or older.

|__| Being over 30 months of age, this child is not required by law to have proof of immunization against Hib.

_____ |__|__|-|__|__|-|__|__|
Signature of Physician/Health Department Official mm dd yy

**THE REQUIREMENT FOR Hib VACCINE BECOMES EFFECTIVE JANUARY 1, 1992.

imm/temphib-S/91

* * * * * * * *

Title of Regulation: **VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.**

Statutory Authority: §§ 32.1-12 and 32.1-102.1 et seq. of the Code of Virginia.

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

1. Request: The emergency regulation is necessary to implement the amendments to the Virginia Medical Care Facilities Certificate of Public Need Law enacted during the 1991 session of the General Assembly. The effective date of the amendments to the law is July 1, 1991.

2. Recommendation: Approval to implement emergency regulations governing the Virginia Medical Care Facilities Certificate of Public Need Program and to initiate the process for promulgation of final regulations. It is anticipated that the Board of Health will approve the emergency regulations at its June 20, 1991 meeting.

/s/ C.M.G. Buttery, M.D., M.P.H.
Date: June 4, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 21, 1991

4. AUTHORIZATION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 26, 1991

5. FILED:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 24, 1991

Nature of Emergency:

On July 1, 1991 amendments to the Virginia Medical Care Facilities Certificate of Public Need Law will become effective (§ 32.1-12 and § 32.1-102.2, et seq., of the Code of Virginia). The amended law requires the Board to promulgate regulations which 1) establish fees for certificate of public need applications to be applied to the expenses for administration and operation of the certificate of public need program, 2) impose time limitations on the schedules for completion of authorized projects and impose maximum limits on the capital cost increases for authorized projects, 3) allow the Commissioner to condition the approval of certificates of public need on an applicant's agreement to provide an acceptable level of care to indigent patients or accept patients requiring specialized care and provide penalties for non-compliance with such conditions. The law also provides for registration of certain capital expenditures of $1,000,000 or more by owners of medical care facilities, specialized centers or clinics or physician's offices. In addition, the law modifies the data reporting requirements for certain deregulated clinical health services and provides penalties for non-compliance registration and data reporting requirements. Finally, the law states that the procedures for review of applications may include a structured batching process incorporating procedures for the Commissioner to request proposals for certain types of projects.

Purpose:

To amend the existing Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations so that compliance with the amended law is possible on July 1, 1991.

VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

PART I.
DEFINITIONS.

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

"Acquisition" means an expenditure of (i) $700,000 or more that changes the ownership of a medical care facility or (ii) $400,000 or more for the purchase of new major medical equipment. It shall also include the donation or lease of a medical care facility or new major medical equipment. An acquisition of a medical care facility shall not include a capital expenditure involving the purchase of stock.

"Amendment" means any modification to an application which is made following the public hearing and prior to the issuance of a certificate and includes those factors that constitute a significant change as defined in these regulations. An amendment shall not include a modification to an application which serves to reduce the scope of a project.

"Applicant" means the owner of an existing medical care facility or the sponsor of a proposed medical care facility project submitting an application for a certificate of public need.

"Application" means a prescribed format for the presentation of data and information deemed necessary by the board to determine a public need for a medical care facility project.

"Application fees" means fees required to be submitted

with a project application and application for a significant change. Fees shall not exceed the lesser of 0.5% of the proposed capital expenditure or cost increase for the project or $5,000.

"Board" means the State Board of Health.

"Capital expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance. Capital expenditures need not be made by a medical care facility so long as they are made in behalf of a medical care facility by any person. (See definition of "person.")

"Certificate of public need" means a document which legally authorizes a medical care facility project as defined herein and which is issued by the commissioner to the owner of such project.

"Clinical health service" means a single diagnostic, therapeutic, rehabilitative, preventive or palliative procedure or a series of such procedures that may be separately identified for billing and accounting purposes.

"Commissioner" means the State Health Commissioner who has authority to make a determination respecting the issuance or revocation of a certificate.

"Competing applications" means applications for the same or similar services and facilities which are proposed for the same planning district or medical service area and which are in the same review cycle. (See ~~§§ 5.8 and 6.5~~ *§ 5.6*).

"Completion" means conclusion of construction activities necessary for substantial performance of the contract.

"Construction" means the building of a new medical facility and/or the expansion, remodeling, or alteration of an existing medical care facility.

"Construction, initiation of" means project shall be considered under construction for the purpose of certificate extension determinations upon the presentation of evidence by the owner of: (i) a signed construction contract; (ii) the completion of short term financing and a commitment for long term (permanent) financing when applicable; (iii) the completion of predevelopment site work; and (iv) the completion of building foundations.

"Date of issuance" means the date of the commissioner's decision awarding a certificate of public need.

"Department" means the State Department of Health.

"Ex parte" means any meeting which takes place between (i) any person acting in behalf of the applicant or holder of a certificate of public need or any person opposed to the issuance or in favor of the revocation of a certificate of public need and (ii) any person who has authority in the department to make a decision respecting the issuance or revocation of a certificate of public need for which the department has not provided 10 days written notification to opposing parties of the time and place of such meeting. An ex parte contact shall not include a meeting between the persons identified in (i) and staff of the department.

"Health planning region" means a contiguous geographical area of the Commonwealth with a population base of at least 500,000 persons which is characterized by the availability of multiple levels of medical care services, reasonable travel time for tertiary care, and congruence with planning districts.

"Informal fact-finding conference" means a conference held pursuant to § 9-6.14:11 of the Code of Virginia.

"Inpatient beds" means accommodations within a medical care facility with continuous support services (such as food, laundry, housekeeping) and staff to provide health or health-related services to patients who generally remain in the medical care facility in excess of 24 hours. Such accommodations are known by varying nomenclatures including but not limited to: nursing beds, intensive care beds, minimal or self care beds, isolation beds, hospice beds, observation beds equipped and staffed for overnight use, and obstetric, medical, surgical, psychiatric, substance abuse, medical rehabilitation and pediatric beds, including pediatric bassinets and incubators. Bassinets and incubator in a maternity department and beds located in labor c birthing rooms, recovery rooms, emergency rooms, preparation or anesthesia inductor rooms, diagnostic or treatment procedures rooms, or on-call staff rooms are excluded from this definition.

"Medical care facilities" means any institution, place, building, or agency, whether or not licensed or required to be licensed by the board or the State Mental Health, Mental Retardation and Substance Abuse Services Board, whether operated for profit or nonprofit and whether privately owned or operated or owned or operated by a local governmental unit, (i) by or in which facilities are maintained, furnished, conducted, operated, or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical, of two or more nonrelated mentally or physically sick or injured persons, or for the care of two or more nonrelated persons requiring or receiving medical, surgical, or nursing attention or services as acute, chronic, convalescent, aged, physically disabled, or crippled or (ii) which is the recipient of reimbursements from third party health insurance programs or prepaid medical service plans. For purposes of these regulations, only the following medical care facility classifications shall be subject to review:

A. *"Medical care facility classifications"* means the following:

1. General hospitals.

2. Sanitariums.

3. Nursing homes.

4. Intermediate care facilities.

5. Extended care facilities.

6. Mental hospitals.

7. Mental retardation facilities.

8. Psychiatric hospitals and intermediate care facilities established primarily for the medical, psychiatric or psychological treatment and rehabilitation of alcoholics or drug addicts.

9. Specialized centers or clinics developed for the provision of out-patient or ambulatory surgery.

10. Rehabilitation hospitals.

B. *"Exclusions"* means that the following shall not be included as a medical care facility classification subject to review:

1. Any facility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. Any nonhospital substance abuse residential treatment program operated by or contracted primarily for the use of a community services board under the Department of Mental Health, Mental Retardation and Substance Abuse Services Comprehensive Plan.

"Medical service area" means the geographic territory from which at least 75% of patients come or are expected to come to existing or proposed medical care facilities, the delineation of which is based on such factors as population characteristics, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed medical care facilities.

"Modernization" means the alteration, repair, remodeling, replacement or renovation of an existing medical care facility or any part thereto, including that which is incident to the initial and subsequent installation of equipment in a medical care facility. (See definition of "construction.")

"Operating expenditure" means any expenditure by or in behalf of a medical care facility which, under generally accepted accounting principles, is properly chargeable as an expense of operation and maintenance and is not a capital expenditure.

"Operator" means any person having designated responsibility and legal authority from the owner to administer and manage a medical care facility. (See definition of "owner.")

"Other plans" means any plan(s) which is formally adopted by an official state agency or regional health planning agency and which provides for the orderly planning and development of medical care facilities and services and which is not otherwise defined in these regulations.

"Owner" means any person which has legal responsibility and authority to construct, renovate or equip or otherwise control a medical care facility as defined herein.

"Person" means an individual, corporation, partnership, association or any other legal entity, whether governmental or private. Such person may also include the applicant for a certificate of public need; the regional health planning agency for the health planning region in which the proposed project is to be located; any resident of the geographic area served or to be served by the applicant; any person who regularly uses health care facilities within the geographic area served or to be served by the applicant; any facility or health maintenance organization (HMO) established under § 38.2-4300 et seq. which is located in the health planning region in which the project is proposed and which provides services similar to the services of the medical care facility project under review; third party payors who provide health care insurance or prepaid coverage to 5% or more patients in the health planning region in which the project is proposed to be located; and any agency which reviews or establishes rates for health care facilities.

"Physician's office" means a place, owned or operated by a licensed physician or group of physicians practicing in any legal form whatsoever, which is designed and equipped solely for the provision of fundamental medical care whether diagnostic, therapeutic, rehabilitative, preventive or palliative to ambulatory patients and which does not participate in cost-based or facility reimbursement from third party health insurance programs or prepaid medical service plans excluding pharmaceuticals and other supplies administered in the office.

"Planning district" means a contiguous area within the boundaries established by the Department of Planning and Budget as set forth in § 15.1-1402 of the Code of Virginia.

"Predevelopment site work" means any preliminary activity directed towards preparation of the site prior to the completion of the building foundations. This includes, but is not limited to, soil testing, clearing, grading, extension of utilities and power lines to the site.

"Progress" means actions which are required in a given period of time to complete a project for which a certificate of public need has been issued. (See § ~~7.3~~ *6.3* on Progress.)

"Project" means:

A. The establishment of a medical care facility; (See definition of medical care "facility.")

B. An increase in the total number of beds in an existing medical *or authorized* care facility.

C. Relocation of 10 beds or 10% of the beds, whichever is less, from one existing physical facility to another in any two-year period; however, a hospital shall not be required to obtain a certificate for the use of 10% of its beds as nursing home beds as provided in § 32.1-132 of the Code.

D. The introduction into any existing medical care facility of any new nursing home service such as intermediate care facility services, extended care facility services or skilled nursing facility services except when such medical care facility is an existing nursing home as defined in ~~Section~~ § 32.1-123 of the Code.

E. The introduction into an existing medical care facility of any new open heart surgery, psychiatric, medical rehabilitation, or substance abuse treatment service which the facility has never provided or has not provided in the previous 12 months.

"Public hearing" means a proceeding conducted by a regional health planning agency at which an applicant for a certificate of public need and members of the public may present oral or written testimony in support or opposition to the application which is the subject of the proceeding and for which a verbatim record is made. (~~See § 5.4 Subsection A or § 6.6 Subsection~~ *See subsection A of § 5.7.*)

"Regional health plan" means the regional plan adopted by the regional health planning agency board.

"Regional health planning agency" means the regional agency, including the regional health planning board, its staff and any component thereof, designated by the Virginia Health Planning Board to perform health planning activities within a health planning region.

"Registration" means the ~~filing of information by the owner on affected new~~ *recordation of the establishment of certain new or expansion of existing* clinical health services ~~established~~ , *acquisition of certain* major medical equipment ~~acquired with an expenditure or expenditure value of $400,000 or more on or after July 1, 1989, in a format prescribed by the Commissioner to satisfy the requirements of these regulations. For purposes of registration, affected clinical health services and major medical equipment shall include only the following:~~ *or initiation of certain capital expenditures as required by §§ 3.2. and 3.3.*

~~(1) radiation therapy;~~

~~(2) cardiac catheterization;~~

~~(3) obstetrical;~~

~~(4) neonatal special care unit;~~

~~(5) lithotripsy;~~

~~(6) magnetic resonance imaging;~~

~~(7) position emission tomgraphy (PET) scanning;~~

~~(8) computed tomography (CT) scanning~~

~~(9) heart, lung and kidney transplants;~~

~~(10)other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the Commissioner.~~

"Schedule for completion" means a timetable which identifies the major activities required to complete a project as identified by the applicant and which is set forth on the certificate of public need. The timetable is used by the commissioner to evaluate the applicant's progress in completing an approved project.

"Significant change" means any alteration, modification or adjustment to a reviewable project for which a certificate of public need has been issued or requested following the public hearing which:

A. Changes the site;

B. Increases the capital expenditure amount approved for the project by 10% or more;

~~C. Changes the number or type of beds including the reclassification of beds from one medical care facility classification to another such as acute care to long term care except when such reclassification is allowable as provided for in these regulations. See definition of "medical care facility";~~

~~D.~~ *C.* Changes the service(s) proposed to be offered;

~~E.~~ *D.* Extends the schedule for completion of the project ~~for more than a 12-month period of time beyond that originally approved by the Commissioner~~ *beyond 3 years (36 months) from the date of certificate issuance or beyond the time period approved by the Commissioner at the date of certificate issuance, whichever is greater* . (See ~~Section 3.4 under mandatory requirements~~ *§§ 6.2 and 6.3*).

"State health plan" means the document approved by the Virginia Health Planning Board which shall include, but not be limited to, analysis of priority health issues, policies, needs and methodologies for assessing statewide health care needs. The State Health Plan 1980-84 and all amendments thereto including all methodologies therein shall remain in force and effect until any such regulation

is amended, modified or repealed by the Board of Health.

"State Medical Facilities Plan" means the planning document adopted by the Board of Health which shall include, but not be limited to (i) methodologies for projecting need for medical care facility beds and services; (ii) statistical information on the availability of medical care facilities and services; and (iii) procedures, criteria and standards for review of applications for projects for medical care facilities and services. In developing the plan, the Board of Health shall take into consideration the policies and recommendations contained in the State Health Plan. The most recent applicable State Medical Facilities Plan shall remain in force until any such regulation is amended, modified or repealed by the Board of Health.

"Virginia Health Planning Board" means the statewide health planning body established pursuant to ~~Section~~ *§* 32.1-122.02 of the Code of Virginia which serves as the analytical and technical resource to the Secretary of Health and Human Resources in matters requiring health analysis and planning.

PART II.
GENERAL INFORMATION.

§ 2.1. Authority for regulations.

The Virginia Medical Care Facilities Certificate of Public Need Law, which is codified as §§ 32.1-102.1 through 32.1-102.11 of the Code of Virginia, requires the owners or sponsors of medical care facility projects to secure a certificate of public need from the State Health Commissioner prior to initiating such projects. ~~Sections~~ *§§* 32.1-102.2 and 32.1-12 of the Code of Virginia direct the Board of Health to promulgate and prescribe such rules and regulations as are deemed necessary to effectuate the purposes of this statute.

§ 2.2. Purpose of rules and regulations.

The board has promulgated these rules and regulations to set forth an orderly administrative process for making public need decisions.

§ 2.3. Administration of rules and regulations.

These rules and regulations are administered by the following:

A. State Board of Health.

The Board of Health is the governing body of the State Department of Health. The Board of Health has the authority to promulgate and prescribe such rules and regulations as it deems necessary to effectuate the purposes of the Act.

B. State Health Commissioner.

The State Health Commissioner is the executive officer of the State Department of Health. The commissioner is the designated decision maker in the process of determining public need under the Act.

§ 2.4. Public meetings and public hearings.

All meetings and hearings convened to consider any certificate of public need application shall be open to the public in accordance with the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.) of the Code of Virginia.

§ 2.5. Official records.

Written information including staff evaluations and reports and correspondence developed or utilized or received by the commissioner during the review of a medical care facility project shall become part of the official project record maintained by the Department of Health and shall be made available to the applicant, competing applicant and review bodies. Other persons may obtain a copy of the project record upon request. All records are subject to the Virginia Freedom of Information Act.

Exclusions - Information submitted to the Commissioner to comply with registration requirements set forth in § 3.2. and 3.3. of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act until such time as the registered service or equipment becomes operational.

§ 2.6. Application of rules and regulations.

These rules and regulations have general applicability throughout the Commonwealth. The requirements of the Virginia Administrative Process Act codified as § 9-6.14:1, et seq., of the Code of Virginia (1950), as amended apply to their promulgation.

§ 2.7. Effective date of rules and regulations.

These rules and regulations shall become effective ~~December 6, 1990~~ *July 1, 1991* .

§ 2.8. Powers and procedures of regulations not exclusive.

The commissioner and the board reserve the right to authorize any procedure for the enforcement of these regulations that is not inconsistent with the provisions set forth herein and the provisions of § 32.1-102.1 et seq. of the Code of Virginia.

§ 2.9. Annual report.

The department shall prepare and shall distribute upon request an annual report on all certificate of public need applications considered by the State Health Commissioner. Such report shall include a general statement of the findings made in the course of each review, the status of

applications for which there is a pending determination, an analysis of the consistency of the decisions with the recommendation made by the regional health planning agency and an analysis of the costs of authorized projects.

PART III.
MANDATORY REQUIREMENTS.

§ 3.1. Requirements for reviewable medical care facility projects.

Prior to initiating a reviewable medical care facility project the owner or sponsor shall obtain a certificate of public need from the commissioner. In the case of an acquisition of an existing medical care facility, the notification requirement set forth in § ~~3.3~~ *3.7* of these regulations shall be met.

§ 3.2. Requirements for registration of affected clinical health services and major medical equipment.

~~Within 30 days following operation, the owner of a new clinical health service established or major medical equipment with an expenditure or expenditure value of $400,000 or more acquired on or after July 1, 1989, that is not defined as a project under these regulations and that has not been previously authorized by the State Health Commissioner prior to July 1, 1989, shall in writing register such service or equipment with the commissioner and copy the regional health planning agency.~~ *At least 30 days prior to (i) establishing a new or expanding an existing clinical health service or (ii) the date of contractual obligation or other commitment to acquire any major medical equipment with an expenditure or expenditure value of $400,000 or more which is not defined as a project under these regulations, and has not been previously authorized by the Commissioner prior to July 1, 1989, the owner of any medical care facility listed in these regulations, physician's office, or specialized center or clinic shall register such service or acquisition of equipment with the Commissioner.* The format for registration shall be prescribed by the commissioner and shall include information concerning the owner and operator, description, site, capital, financing and lease costs, beginning date and hours of operation of clinical health service and major medical equipment. For purposes of registration, (i) owner shall include any person offering affected clinical health services and major medical equipment and (ii) affected clinical health services and major medical equipment shall include only the following:

1. radiation therapy;

2. cardiac catheterization;

3. obstetrical;

4. neonatal *special care unit* ;

5. lithotripsy;

6. magnetic resonance imaging;

7. positron emission tomography (PET) scanning;

8. computed tomography (CT) scanning;

9. heart, lung, ~~and~~ kidney , *other major internal organ or tissue* transplants

10. other specialized services or major medical equipment that evolves through changes in medical technology upon designation by the commissioner.

The commissioner shall acknowledge *the* registration within 15 days of receipt.

§ 3.3. Requirements for registration of capital expenditures.

At least 30 days prior to making a capital expenditure of $1,000,000 or more which is not defined as a project under these regulations and has not been previously authorized by the Commissioner, the owner of any medical care facility as defined in these regulations, physician's office, or specialized center or clinic, shall register in writing such expenditure with the Commissioner. The format for registration shall be prescribed by the Commissioner and shall include information concerning the purpose of such expenditure and projected impact that the expenditure will have upon the charges for services. Fo purposes of registration, the owner shall include an person making the affected capital expenditure.

§ 3.4. Reporting requirements for registered services and equipment.

Owners of services and equipment registered in accordance with § 3.2. of these regulations shall report to the Commissioner on a quarterly basis information concerning patient volumes, morbidity and mortality, aggregate costs and charges, and other information which is designated by the Commissioner about the services provided. Data reports shall be provided on a format prescribed by the Commissioner and shall cover the periods of July 1 through September 30; October 1 through December 30; January 1 through March 30; and April 1 through June 30. Reports shall be submitted to the Commissioner within 30 days following the last day of the quarter report period in which the registered service or equipment becomes operational and 30 days following the last day of every quarter report period thereafter.

§ 3.5. Penalties for non-compliance with registration and reporting requirements.

Any person willfully refusing, failing or neglecting to comply with registration or reporting requirements set forth in §§ 3.2., 3.3. and 3.4. of these regulations will be subject to a civil penalty of $100 per violation per day from the date written notification is received from th department until the required registration or reporti

forms are submitted to the department. Upon information and belief that a person has failed to comply with registration and reporting requirements in accordance with this provision, the Department shall notify the person in writing, and 15 days shall be provided for a response in writing, including a plan for immediate correction. In the absence of adequate response or the necessary compliance or both, a judicial action shall be initiated in accordance with provisions of § 32.1-27 of the Code.

§ 3.6. Confidentiality of information.

Information provided to the department by persons to satisfy registration requirements set forth in §§ 3.2 and 3.3 of these regulations shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in § 2.1-342 of the Code of Virginia until such time as the new or expanded clinical health service becomes operational. In accordance with this provision, the Department shall not provide information it receives about registered services to any person until the new or expanded services become operational. Persons registering the new service or equipment or capital expenditure shall notify the Department in writing of the date the service or equipment becomes operational or the expenditure is made and provide a copy of this notification to the appropriate regional health planning agency.

§ ~~3.3.~~ *3.7.* Requirement for notification of proposed acquisition of medical care facilities.

At least 30 days before any person is contractually obligated to acquire an existing medical care facility, the cost of which is $700,000 or more, that person shall provide written notification to the commissioner and the regional health planning agency that serves the area in which the facility is located. Such notification shall identify the name of the medical care facility, the current and proposed owner, the cost of the acquisition, the services to be added or deleted, the number of beds to be added or deleted, and the projected impact that the cost of the acquisition will have upon the charges of the services to be provided in the medical care facility. The commissioner shall provide written notification to the person who plans to acquire the medical care facility within 30 days of receipt of the required notification. If the commissioner finds that a reviewable clinical health service or beds are to be added as a result of the acquisition, the commissioner may require the proposed new owner to obtain a certificate prior to the acquisition. If such certificate is required, an application will be considered under an appropriate review procedure which will be identified at the time of written notification by the commissioner to the applicant for such acquisition.

§ ~~3.4.~~ *3.8.* Significant change limitation.

No significant change in a project for which a certificate of public need has been issued shall be made without prior written approval of the commissioner. Such request for a significant change shall be made in writing by the owner to the commissioner with a copy to the appropriate regional health planning agency. *The owner shall also submit the application fee to the Department if applicable at the time the written request is made.* The written request shall identify the nature and purpose of the change. The regional health planning agency shall review the proposed change and notify the commissioner of its recommendation with respect to the change within 30 days from receipt of the request by both the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the 30-day period shall constitute a recommendation of approval. The commissioner shall act on the significant change request within 35 days of receipt. A public hearing during the review of a proposed significant change request is not required unless determined necessary by the commissioner. *The Commissioner shall not approve a significant change in cost for a project which exceeds the authorized capital expenditure by more than 20%. The Commissioner shall not extend the schedule for completion of a project beyond three years from the date of issuance of the certificate or beyond the time period approved by the Commissioner at the date of certificate issuance, whichever is greater, except when delays in completion of a project have been caused by events beyond the control of the owner and the owner has made substantial and continuing progress toward completion of the project.*

§ ~~3.5.~~ *3.9.* Requirements for health maintenance organizations.

An HMO must obtain a certificate of public need prior to initiating a project. Such HMO must also adhere to the requirements for the acquisition of medical care facilities if appropriate. See definition of "project" and § ~~3.3~~ *3.7* .

PART IV.
DETERMINATION OF PUBLIC NEED (REQUIRED CONSIDERATIONS).

§ 4.1. In determining whether a public need exists for a proposed project, the following factors shall be taken into account when applicable:

A. The recommendation and the reasons therefor of the appropriate regional health planning agency.

B. The relationship of the project to the applicable health plans of the regional health planning agency, and the Virginia Health Planning Board and the Board of Health.

C. The relationship of the project to the long-range development plan, if any, of the person applying for a certificate.

D. The need that the population served or to be served by the project has for the project.

E. The extent to which the project will be accessible to

all residents of the area proposed to be served.

F. The area, population, topography, highway facilities and availability of the services to be provided by the project in the particular part of the health planning region in which the project is proposed.

G. Less costly or more effective alternate methods of reasonably meeting identified health service needs.

H. The immediate and long-term financial feasibility of the project.

I. The relationship of the project to the existing health care system of the area in which the project is proposed.

J. The availability of resources for the project.

K. The organizational relationship of the project to necessary ancillary and support services.

L. The relationship of the project to the clinical needs of health professional training programs in the area in which the project is proposed.

M. The special needs and circumstances of an applicant for a certificate, such as a medical school, hospital, multidisciplinary clinic, specialty center or regional health service provider, if a substantial portion of the applicant's services or resources or both is provided to individuals not residing in the health planning region in which the project is to be located.

N. The need and the availability in the health planning region for osteopathic and allopathic services and facilities and the impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

O. The special needs and circumstances of health maintenance organizations. When considering the special needs and circumstances of health maintenance organizations, the commissioner may grant a certificate for a project if the commissioner finds that the project is needed by the enrolled or reasonably anticipated new members of the health maintenance organizations or the beds or services to be provided are not available from providers which are not health maintenance organizations or from other maintenance organizations in a reasonable and cost effective manner.

P. The special needs and circumstances for biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

Q. The costs and benefits of the construction associated with the proposed project.

R. The probable impact of the project on the costs of and charges for providing health services by the applicant for a certificate and on the costs and charges to the public for providing health services by other persons in the area.

S. Improvements or innovations in the financing and delivery of health services which foster competition and serve to promote quality assurance and cost effectiveness.

T. In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities in the area similar to those proposed.

~~PART V.~~
~~ADMINISTRATIVE REVIEW PROCESS.~~

~~§ 5.1. Applicability.~~

~~The administrative review procedure shall be applicable to projects involving (i) a capital expenditure of $700,000 but not more than $3 million which does not change bed capacity or replace existing beds of relocate 10 beds or 10% of the beds whichever is less from one physical facility to another in any two year period or add a clinical health service unless such service is determined to be exempt from review procedures by the commissioner or these regulations, or (ii) a capital expenditure of less than $700,000 and which does change bed capacity or replace existing beds or relocate 10 beds or 10% of the beds whichever is less from one physical facility to another in any two year period or add a new clinical health service unless such service is determined to be exempt from review procedures by the commissioner and these regulations.~~

~~§ 5.2. Preconsultation.~~

~~Each regional health planning agency, in consultation with the department shall provide upon request, advice and assistance concerning community health resources needs to potential applicants submitting projects under the administrative review process. Such advice and assistance shall be advisory only and shall not be a commitment on behalf of the regional health planning agency or the commissioner.~~

~~§ 5.3. Application forms.~~

~~A. Obtaining application forms.~~

~~Applications forms shall be available from the commissioner upon written request by the applicant. The request shall identify the owner, the type of project for which forms are requested and the proposed scope (size) and location of the proposed project. A copy of the request should also be submitted by the applicant to the appropriate regional health planning agency. The department shall transmit application forms to the applicant within 15 days of receipt of request.~~

~~B. Filing application forms.~~

All applications including required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate regional health planning agency. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

§ 5.4. Review of application.

A. Review cycle.

The department shall notify applicant(s) upon receipt of an application by the department and the regional health planning agency of the review schedule including the date, time and place for any informal fact-finding conference held. See §§ 5.9 and 6.6. The regional health planning agency shall within 30 days of the first day of the review cycle of the application and following the public hearing conducted in accordance with subsection B of § 6.6 of these regulations, notify the commissioner of its recommendation. Failure of the regional health planning agency to notify the commissioner within the 30 day time period shall constitute a recommendation of approval. The department shall transmit its report and the information transmitted to the commissioner by the regional health planning agency to the applicant(s) by the 30th day of the review cycle.

B. Ex parte contact.

After commencement of a public hearing and before a final decision is made there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. See definition of "ex parte" contact.

§ 5.5. Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other information to the appropriate regional health planning agency and the commissioner at appropriate times for consideration prior to their final action.

§ 5.6. Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an applicant following the public hearing specified in subsection A of § 6.4 and prior to the issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in Part V of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with § 3.4 of these regulations.

§ 5.7. Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time, without prejudice, by written notification to the commissioner.

§ 5.8. Consideration of applications.

All competing applications shall be considered at the same time by the regional health planning agency and the commissioner. The commissioner shall determine if an application is competing and shall provide written notification to the competing applicants and appropriate regional health planning agency.

§ 5.9. Action on an application.

A. Commissioner's responsibility.

Decisions as to approval or disapproval of applications or a portion thereof for certificate of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Plan and the State Medical Facilities Plan; provided, however, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

B. Notification process extension of review time.

The commissioner shall make final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 35th day of the review cycle unless an extension is agreed to by the applicant or an informal fact-finding conference described in § 6.6 is held. When an informal fact-finding conference is necessary, the review cycle shall automatically be extended to no more than 120 days unless otherwise agreed to by the parties to the conference. Such written notification shall reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant. See definition of "ex parte."

PART ~~VI~~ V.
STANDARD REVIEW PROCESS.

§ ~~6.1.~~ *5.1.* Preconsultation.

Each regional health planning agency and the department shall provide upon request advice and assistance concerning community health resources needs to potential applicants. Such advice and assistance shall be advisory only and shall not be a commitment on behalf of the regional health planning agency or the commissioner.

§ ~~6.2.~~ *5.2.* Application forms.

A. Obtaining application forms.

Application forms shall be available from the commissioner upon written request by the applicant. The request shall identify the owner, the type of project for which forms are requested and the proposed scope (size) and location of the proposed project. Such letter must be directed to the commissioner prior to the submission of the application. A copy of the request should also be submitted by the applicant to the appropriate regional health planning agency. The department shall transmit application forms to the applicant within 15 days of receipt of request.

B. Application Fees.

The Department shall collect application fees for applications submitted requesting a certificate of public need. The fee required for an application is the lesser of 0.5% of the proposed capital expenditure for the project or $5,000. No application will be deemed to be complete for review until the required application fee is paid.

~~B.~~ *C.* Filing application forms.

All applications including required data and information shall be prepared in triplicate; two copies to be submitted to the department; one copy to be submitted to the appropriate regional health planning agency. No application shall be deemed to have been submitted until required copies have been received by the department and the appropriate regional health planning agency.

§ ~~6.3.~~ *5.3.* Review for completeness.

The applicant shall be notified by the department within 15 days following receipt of the application if additional information is required to complete the application or the application is complete as submitted. No application shall be reviewed until the department has determined that it is complete. To be complete, all questions on the application must be answered to the satisfaction of the commissioner and all requested documents supplied, when applicable *and the application fee submitted* . Additional information required to complete an application should be submitted to the department and the appropriate regional health planning agency five days prior to the beginning of a review cycle in order to ensure review in the same review cycle. The review cycle for completed applications begins on the 10th day of each month or in the event that the 10th day falls on the weekend, the next work day. See § ~~6.6~~ *5.7.* Subsection A.

§ ~~6.4.~~ *5.4.* One hundred twenty-day review cycle.

The review of a completed application for a certificate of public need shall be accomplished within 120 days of the beginning of the review cycle. See § ~~6.6~~ *5.6* Subsection A.

§ ~~6.5.~~ *5.5.* Consideration of applications.

All competing applications shall be considered at the same time by the regional health planning agency and the commissioner. The commissioner shall determine if an application is competing and shall provide written notification to the competing applicants and appropriate regional health planning agency.

§ ~~6.6.~~ *5.6.* Review of complete application.

A. Review cycle.

At the close of the work day on the 10th day of the month, the department shall provide written notification to applicants specifying the acceptance date and review schedule of completed applications including a proposed date for any informal fact-finding conference that may be held. The regional health planning agency shall conduct no more than two meetings, one of which must be a public hearing conducted by the regional health planning agency board or a subcommittee of the board and provide applicants with an opportunity, prior to the vote, to respond to any comments made about the project by the regional health planning agency staff, any information in a staff report, or comments by those voting in completing its review and recommendation by the 60th day of the cycle. By the 70th day of the review cycle, the department shall complete its review and recommendation of an application and transmit the same to the applicant(s) and other appropriate persons. Such notification shall also include the proposed date, time and place of any informal fact-finding conference.

An informal fact-finding conference shall be held when (i) determined necessary by the department or (ii) requested by any person opposed to a project seeking to demonstrate good cause at the conference. Any person seeking to demonstrate good cause shall file no later than seven days prior to the conference written notification to the commissioner, applicant(s) and other competing applicants and regional health planning agency stating the grounds for good cause.

For purposes of this section, good cause shall mean that (i) there is significant, relevant information not previously presented at and not available at the time of the public hearing, (ii) there have been significant changes in factors or circumstances relating to the application subsequent to the public hearing or (iii) there is a substantial material mistake of fact or law in the department staff's report on the application or in the report submitted by the regional health planning agency. See § 9-6.14:11 of the Code of Virginia.

The commissioner shall render a final determination by the 120th day of the review cycle. Unless agreed to by the applicant and, when applicable, the parties to any informal fact-finding conference held, the review schedule shall not be extended.

B. Regional health planning agency required notifications.

Upon notification of the acceptance date of a complete application as set forth in § ~~6.6~~ ~~Subsection~~ ~~A~~ *subsection A of this section* of these regulations, the regional health planning agency shall provide written notification of its review schedule to the applicant. The regional health planning agency shall notify health care providers and specifically indentifiable consumer groups who may be affected by the proposed project directly by mail and shall also give notice of the public hearing in a newspaper of general circulation in such county or city wherein a project is proposed or a contiguous county or city at least nine days prior to such public hearing. Such notification by the regional health planning agency shall include: (i) the date and location of the public hearing which shall be conducted on the application except as otherwise provided in these rules and regulations, in the county or city wherein a project is proposed or a contiguous county or city and (ii) the date, time and place the final recommendation of the regional health planning agency shall be made. The regional health planning agency shall maintain a verbatim record which may be a tape ecording of the public hearing. Such public hearing record shall be maintained for at least a one year time period following the final decision on a certificate of public need application. (See definition of "public hearing.")

C. Ex parte contact.

After commencement of a public hearing and before a final decision is made, there shall be no ex parte contacts between the State Health Commissioner and any person acting on behalf of the applicant or holder of a certificate or any person opposed to the issuance or in favor of revocation of a certificate of public need, unless written notification has been provided. (See definition of "ex parte.")

§ ~~6.7.~~ *5.7.* Participation by other persons.

Any person affected by a proposed project under review may directly submit written opinions, data and other information to the appropriate regional health planning agency and the commissioner for consideration prior to their final action.

§ ~~6.8.~~ *5.8.* Amendment to an application.

The applicant shall have the right to amend an application at any time. Any amendment which is made to an application following the public hearing and prior to he issuance of a certificate unless otherwise specified in these regulations shall constitute a new application and shall be subject to the review requirements set forth in Part VI of the regulations. If such amendment is made subsequent to the issuance of a certificate of public need, it shall be reviewed in accordance with ~~Section~~ ~~3.4~~ *§ 3.8* of the regulations.

§ ~~6.9.~~ *5.9.* Withdrawal of an application.

The applicant shall have the right to withdraw an application from consideration at any time, without prejudice by written notification to the commissioner.

§ ~~6.10.~~ *5.10.* Action on an application.

A. Commissioner's responsibility.

Decisions as to approval or disapproval of applications or a portion thereof for certificates of public need shall be rendered by the commissioner. Any decision to issue or approve the issuance of a certificate shall be consistent with the most recent applicable provisions of the State Health Plan and the State Medical Facilities Plan; provided, however, if the commissioner finds, upon presentation of appropriate evidence, that the provisions of either such plan are inaccurate, outdated, inadequate or otherwise inapplicable, the commissioner, consistent with such finding, may issue or approve the issuance of a certificate and shall initiate procedures to make appropriate amendments to such plan.

Conditions of approval.

The Commissioner may condition the approval of an application for a project on the agreement by the applicant to provide an acceptable level of free care or care at a reduced rate to indigents or to provide care to persons with special needs. The terms of such agreements shall be specified in writing prior to the Commissioner's decision to approve a project. Any person willfully refusing, failing or neglecting to honor such agreements shall be subject to a civil penalty of $100 per violation per day from the date of receipt from the department of written notice of non-compliance until the date of compliance. Upon information and belief that a person has failed to honor such agreement in accordance with this provision, the department shall notify the person in writing and 15 days shall be provided for a response in writing including a plan for immediate correction. In the absence of an adequate response or necessary compliance or both, a judicial action shall be initiated in accordance with the provisions of § 32.1-27 of the Code.

B. Notification process-extension of review time.

The commissioner shall make a final determination on an application for a certificate of public need and provide written notification detailing the reasons for such determination to the applicant with a copy to the regional health planning agency by the 120th day of the review cycles unless an extension is agreed to by the applicant

and an informal fact-finding conference described in § 5.6 is held. When an informal fact-finding conference is held, the 120 day review cycle shall not be extended unless agreed to by the parties to the conference. Such written notification shall also reference the factors and bases considered in making a decision on the application and, if applicable, the remedies available for appeal of such decision and the progress reporting requirements. The commissioner may approve a portion of a project provided the portion to be approved is agreed to by the applicant following consultation, which may be subject to the ex parte provision of these regulations, between the commissioner and the applicant.

PART ~~VII.~~ *VI.*
DURATION/EXTENSION/REVOCATION OF CERTIFICATES.

§ ~~7.1.~~ *6.1.* Duration.

A certificate of public need shall be valid for a period of 12 months and shall not be transferrable from the certificate holder to any other legal entity regardless of the relationship, under any circumstances.

§ ~~7.2.~~ *6.2.* Extension.

A certificate of public need is valid for a 12-month period and may be extended by the commissioner for additional time periods which shall be specified at the time of the extension.

A. Basis for certificate extension within 24 months.

An extension of a certificate of public need beyond the expiration date may be granted by the commissioner by submission of evidence to demonstrate that progress is being made towards the completion of the authorized project as defined in § ~~7.3~~ *6.3* of the regulations. Such request shall be submitted to the commissioner in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate or period of extension.

B. Basis for certificate extension beyond 24 months.

An extension of a certificate of public need beyond the two years following the date of issuance may be granted by the commissioner when substantial and continuing progress is being made towards the development of the authorized project. In making the determination, the commissioner shall consider whether: (i) *any* delays in development of the project have been caused by events beyond the control of the owner; (ii) substantial delays in development of the project may not be attributed to the owner; and (iii) a ~~revised~~ schedule of completion has been provided and determined to be reasonable. Such request shall be submitted in writing with a copy to the appropriate regional health planning agency at least 30 days prior to the expiration date of the certificate of period of extension. *The Commissioner shall not grant an extension to the schedule for completion of a project beyond 3 years (36 months) of the date of certificate issuance or beyond the time period approved at the date of certificate issuance, whichever is greater, unless such extension is authorized in accordance with the provisions for a significant change. (See § 3.8. Significant change limitation)*

C. Basis for indefinite extension.

A certificate shall be considered for an indefinite extension by the commissioner when satisfactory completion of a project has been demonstrated as set forth in § ~~7.3. Subsection C and the definition of "construction, initiation of"~~ *Subsection C of § 6.3* .

D. Regional health planning agency review.

All requests for an extension of a certificate of public need shall be reviewed by the appropriate regional health planning agency within 30 days of receipt by the department and the regional health planning agency. The recommendations on the request by that agency shall be forwarded to the commissioner who shall act upon the progress report within 35 days of receipt by the department and the regional health planning agency. Failure of the regional health planning agency to notify the commissioner within the time frame prescribed shall constitute a recommendation of approval by such regional health planning agency.

E. Notification of decision.

Extension of a certificate of public need by the commissioner shall be made in the form of a letter from the commissioner with a copy to the appropriate regional health planning agency and shall become part of the official project file.

§ ~~7.3.~~ *6.3.* Demonstration of progress.

The applicant shall provide reports to demonstrate progress made towards the implementation of an authorized project in accordance with the schedule of development which shall be included in the application. Such progress reports shall be filed in accordance with the following intervals and contain such evidence as prescribed at each interval:

A. Twelve months following issuance.

Documentation that shows: (i) proof of ownership or control of site; (ii) the site meets all zoning and land use requirements; (iii) architectural planning has been initiated; (iv) preliminary architectural drawings and working drawings have been submitted to appropriate state reviewing agencies and the State Fire Marshal; (v) construction financing has been completed or will be completed within two months and (vi) purchase orders of lease agreements exist for equipment and new service projects.

B. Twenty-four months following issuance.

Documentation that shows that (i) all required financing is completed; (ii) preconstruction site work has been initiated; (iii) construction bids have been advertised and the construction contractor has been selected; (iv) the construction contract has been awarded and (v) construction has been initiated.

C. Upon completion of a project.

Any documentation not previously provided which: (i) shows the final costs of the project, including the method(s) of financing; and (ii) shows that the project has been completed as proposed in accordance with the application originally submitted, including any subsequent approved changes. *(See "completion" in Section 1.1.)*

§ ~~7.4.~~ *6.4.* Revocation of certificate.

A. Lack of progress.

Failure of any project to meet the progress requirements stated in § ~~7.3~~ *6.3.* shall be cause for certificate revocation, unless the commissioner determines sufficient justification exists to permit variance, considering factors enumerated in § ~~7.3~~ *6.3* .

B. Failure to report progress.

Failure of an applicant to file progress reports on an approved project in accordance with § ~~7.3~~ *6.3* of these regulations shall be cause for revocation, unless , due to extenuating circumstances , the commissioner , *in his sole discretion, extends the certificate,* in accordance with subsection B of § ~~7.2~~ *6.2* of these regulations.

C. Unapproved changes.

Exceeding a capital expenditure amount not authorized by the commissioner or not consistent with the schedule of completion. (See definition of "significant change" and "schedule of completion.")

D. Failure to initiate construction.

Failure to initiate construction of the project within two years following the date of issuance of the certificate of public need shall be cause for revocation, unless due to extenuating circumstances the commissioner extends the certificate, in accordance with § ~~7.2. Subsection B~~ *subsection B of § 6.2.* of these regulations.

E. Misrepresentation.

Upon determination that an applicant has knowingly misrepresented or knowingly withheld relevant data or information prior to issuance of a certificate of public need, the commissioner may revoke said certificate.

F. Noncompliance with assurances.

Failure to comply with the assurances or intentions set forth in the application or written assurances provided at the time of issuance of a certificate of public need shall be cause for revocation.

PART ~~VIII.~~ *VII.*
APPEALS.

§ ~~8.1.~~ *7.1.* Court review.

A. Appeal to circuit court.

Appeals to a circuit court shall be governed by applicable provisions of Virginia's Administrative Process Act, § 9-6.14:15 et seq. of the Code *of Virginia* . Any applicant aggrieved by a final administrative decision on its application for a certificate, any third party payor providing health care insurance or prepaid coverage to 5.0% or more of the patients in the applicant's service area, a regional health planning agency operating in the applicant's service area or any person showing good cause or any person issued a certificate aggrieved by a final administrative decision to revoke said certificate, within 30 days after the decision, may obtain a review, as provided in § 9-6.14:17 of the Code of Virginia by the circuit court of the county or city where the project is intended to be or was constructed, located or undertaken. Notwithstanding the provisions of § 9-6.14:16 of the Administrative Process Act, no other person may obtain such review.

B. Designation of judge.

The judge of the court referred to in § ~~8.1. Subsection A of these regulations~~ *subsection A of § 7.1.* shall be designated by the Chief Justice of the Supreme Court from a circuit other than the circuit where the project is or will be under construction, located or undertaken.

C. Court review procedures.

Within five days after the receipt of notice of appeal, the department shall transmit to the appropriate court all of the original papers pertaining to the matter to be reviewed. The matter shall thereupon be reviewed by the court as promptly as circumstances will reasonably permit. The court review shall be upon the record so transmitted. The court may request and receive such additional evidence as it deems necessary in order to make a proper disposition of the appeal. The court shall take due account of the presumption of official regularity and the experience and specialized competence of the commissioner. The court may enter such orders pending the completion of the proceedings as are deemed necessary or proper. Upon conclusion of review, the court may affirm, vacate or modify the final administrative decision.

D. Further appeal.

Any party to the proceeding may appeal the decision of the circuit court in the same manner as appeals are taken

and as provided by law.

PART ~~IX.~~ *VIII.*
SANCTIONS.

§ ~~9.1.~~ *8.1.* Violation of rules and regulations.

Commencing any project without a certificate required by this statute shall constitute grounds for refusing to issue a license for such project.

§ ~~9.2.~~ *8.2.* Injunctive relief.

On petition of the commissioner, the Board of Health or the Attorney General, the circuit court of the county or city where a project is under construction or is intended to be constructed, located or undertaken shall have jurisdiction to enjoin any project which is constructed, undertaken or commenced without a certificate or to enjoin the admission of patients to the project or to enjoin the provision of services through the project.

PART ~~XI.~~ *IX.*
OTHER.

§ ~~10.1.~~ *9.1.* Certificate of public need moratorium.

Notwithstanding any law to the contrary, the Commissioner shall not approve, authorize or accept applications for the issuance of any certificate of public need pursuant to the regulations for a medical care facility project which would increase the number of nursing home beds from the effective date of the regulations through ~~January 1, 1991~~ *June 30, 1993.* However, the commissioner may approve or authorize the issuance of a certificate of public need for the following projects:

A. The renovation or replacement on site of a nursing home, intermediate care or extended care facility or any portion thereof or *replacement off-site of an existing facility at a location within the same city or county and within reasonable proximity to the current site when replacement on the current site is proven unfeasible* when a capital expenditure is required to comply with life safety codes, licensure, certification or accreditation standards. *Under no circumstances shall the State Health Commissioner approve, authorize, or accept an application for the issuance of a certificate for any project which would result in the continued use of the facility replaced as a nursing home.*

B. The conversion on site of existing licensed beds of a medical care facility other than a nursing home, extended care, or intermediate care facility to beds certified for skilled nursing services (SNF) when (i) the total number of beds to be converted does not exceed the lesser of 20 beds or 10% of the beds in the facility; (ii) the facility has demonstrated that the SNF beds are needed specifically to serve as specialty heavy care patient population, such as ventilator-dependent and AIDS patients and that such patients otherwise will not have reasonable access to such services in existing or approved facilities; and (iii) the facility further commits to admit such patients on a poverty basis once the SNF unit is certified and operational.

C. The conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of March 1, 1990, to beds certified as nursing facility beds when (i) the total number of beds to be converted does not exceed the lesser of thirty beds or twenty five percent of the beds in the home for adults facility; (ii) the home for adults facility has demonstrated that nursing facility beds are needed specifically to serve a patient population of AIDS, or ventilator-dependent, or head and spinal cord injured patients, or any combination of the three, and that such patients otherwise will not have reasonable access to such services in existing or approved nursing facilities; (iii) the home for adults facility further commits to admit such patients once the nursing facility beds are certified and operational; and (iv) the licensed home for adults facility otherwise meets the standards for nursing facility beds as set forth in the regulations of the Board of Health.

D. Any project for an increase in the number of beds in which nursing home or extended care services are provided, or the creation of new beds in which such services are to be provided, by a continuing care provider registered as of January 15, 1991, with the State Corporation Commission pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 of this Code, if (i) the total number of new or additional nursing home beds does not exceed thirty-two when the beds are to be added by new construction, or twenty-five when the beds are to be added by conversion on site of existing beds in a home for adults facility licensed pursuant to Chapter 9 (§ 63.1-172 et seq.) of Title 63.1 as of January 15, 1991, and (ii) such beds are necessary to meet existing or reasonably anticipated obligations to provide care to present or prospective residents of the continuing care facility pursuant to continuing care contracts meeting the requirements of § 38.2-4905. No application for a certificate of public need for the creation or addition of nursing home beds pursuant to this section shall be accepted from a provider who, as of January 15, 1991, had an existing complement of beds, unless such provider agrees in writing not to seek certification for the use of such new or additional beds by persons eligible to receive medical assistance services pursuant to Title XIX of the United States Social Security Act. Further, if a certificate is approved, pursuant to this section, to increase the number of nursing home beds for a provider who has an existing complement of such beds, admissions to such beds shall thereafter be restricted to persons who have entered into continuing care contracts meeting the requirements of § 38.2-4905.

E. Notwithstanding the foregoing and other provisions of Article 1.1 (§ 32.1-102.1 et seq. of Chapter 4 of Title 32.1, of the Code, the state home for aged and infirm veteran

authorized by Chapter 668, 1989 Acts of Assembly, shall be exempt from all certificate of public need review requirements as a medical care facility.

§ ~~10.2.~~ *9.2.* Expiration of requirements for general hospitals and outpatient or ambulatory surgery centers of clinics.

Notwithstanding any law to the contrary, as of July 1, ~~1991~~ *1993* , general hospital and specialized centers or clinics developed for the provision of outpatient or ambulatory surgery shall no longer be medical care facilities subject to review pursuant to these Regulations except with respect to the establishment of nursing home beds in general hospitals.

§ 9.3. Notwithstanding the authority of the Commissioner to grant an extension of a schedule for completion of the project pursuant to Part VI of these regulations, no extension shall be granted beyond June 30, 1992 for any nursing home project approved prior to January 1, 1991. However the Commissioner may grant an extension of a schedule for completion for an additional six months upon determining that (i) substantial and continuing progress has been made toward completion of the project; and (ii) the project owner had agreed in writing prior to February 13, 1991 to delay the project to facilitate cost savings for the Commonwealth. The certificate for any such nursing home bed project approved prior to January 1, 1991, which has not been completed by June 30, 1992, or by the expiration date of any approved extension shall be revoked.

PART X.
SEVERABILITY CLAUSE.

§ 10.1. If any clause, sentence, paragraph, subdivision, section or part of these rules and regulations, shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **State Plan for Medical Assistance Relating to EPSDT and Inpatient Psychiatric Services.**
VR 460-01-22. Services.
VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.

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

Effective Dates: July 1, 1991, through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt an emergency regulation entitled Early and Periodic Screening, Diagnosis, and Treatment Program (EPSDT) and Inpatient Psychiatric Services. This regulation provides for federally mandated coverage and for its reimbursement.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Early and Periodic Screening, Diagnosis, and Treatment Program and Inpatient Psychiatric 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
June 14, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 21, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 25, 1991

DISCUSSION

6. BACKGROUND: The sections of the State Plan for Medical Assistance Services (the Plan) affected by this emergency regulation are: preprinted page 22; the Amount, Duration, and Scope of Services narrative (Supplement 1 to Attachment 3.1 A and B); Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C); and Methods and Standards for Establishing Payment Rates - Other Types of Care (Attachment 4.19 B). The State Plan Amendment required for federal approval of these changes will be submitted in the near future.

The Omnibus Budget Reconciliation Act of 1989 (OBRA '89) requires that state Medicaid programs provide to recipients any and all services permitted to be covered under federal law, when the need for those services are identified as a result of screenings through the Early and Periodic Screening, Diagnosis, and Treatment Program. Such services must be provided even if they are not otherwise covered under the Plan, and are thus not

available to recipients independent of EPSDT referral.

The EPSDT program provides for screening and diagnostic services to determine physical and mental defects in recipients younger than age 21; and health care, treatment, and other services to correct or ameliorate any defects or chronic conditions discovered. EPSDT is a mandatory program which must be provided for all Medicaid-eligible recipients who are 18 years old or younger and, at the state's option, up through age 21. The Commonwealth provides EPSDT to recipients through age 21.

One service now required to be covered for recipients because of EPSDT is inpatient psychiatric services in psychiatric facilities or programs. These regulations reflect the definition of the service in the Code of Federal Regulations (42 CFR § 440.160) and describe a unique reimbursement methodology associated with the service.

All other services now required to be covered for recipients younger than 21 because of EPSDT will be reimbursed using either a fee-for-service or a cost-based reimbursement methodology, depending on the provider type.

The purpose of this emergency regulation is to promulgate regulations necessary to implement federal requirements related to EPSDT, and to prescribe reimbursement methodologies consistent with those requirements.

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 (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(c)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency will initiate the public notice and comment process as contained in Article 2 of the APA.

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. The Health Care Financing Administration of the U.S. Department of Health and Human Services has required the submission of a State Plan Amendment for the coverage and reimbursement of these EPSDT issues to justify federal financial participation. Therefore, an emergency regulation is needed to meet the agency's July 1, 1991, effective date.

8. FISCAL/BUDGETARY IMPACT: DMAS proposes to reimburse for this service in accordance with OBRA '89 which increased the number of services paid for by the state under EPSDT. Prior to the changes mandated by OBRA '89, states only covered those services (detected by screening programs) that were included in their Medicaid plans. The law now requires that Medicaid programs pay for all health care services authorized under the federal Medicaid program whether or not those services are covered in a state's Plan. In addition, the law requires states to accomplish a greater number of screenings. Increased EPSDT services will cost an additional $2.808 million GF (FY 91 - $0.953 M; FY 92 - $1,855 M).

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective July 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 reimburse for these additional services, including inpatient psychiatric services related to EPSDT.

10. APPROVAL SOUGHT for VR 460-01-22, 460-03-3.1100, 460-02-3.1300, 460-02-4.1920.

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 460-01-22. Services.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

Citation

3.1(A)(5) (Continued)

(iii) Services made available to the medically needy are equal in amount, duration, scope for each person in a medically needy coverage group.

/___/ Yes.

/___/ Not applicable. The medically needy are not included in the plan.

441,55 50 FR 43654, P.L. 101-239 (§6403) and 1902(a)(43), 1905(a)(4), and 1905(r) of the Act.

(a)(6) The Medicaid agency meets the requirements of 42 CFR 441.56 through 441.62 and P.L. 101-239 with respect to early and periodic screening, diagnosis, and treatment (EPSDT) services.

/___/ The Medicaid agency has in effect agreements with continuing care providers. Described below are the methods employed to assure the providers' compliance with their agreements.

TN.No. _____ Approval Date _____ Effective Date _____

Supersedes TN.No. _____

VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services.

4b. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

A. Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under twenty-one (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 twenty-one (21) days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

B. 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.

C. 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.

D. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan.

4c. Family planning services and supplies for individuals of child-bearing age.

A. 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.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

f. 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.

g. When the resident no longer meets long stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

C. Inpatient Psychiatric Care resulting from an EPSDT screening. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403 and § 4b to Attachment 3.1 A & B Supplement 1, inpatient psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a well child screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.

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

"CFR" means the Code of Federal Regulations.

"Covered psychiatric services" means admission to a psychiatric facility for either psychiatric or substance abuse services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation, and Substance Abuse Services.

"DMAS" means the Department of Medical Assistance Services.

"JCAHO" means Joint Commission on Accreditation of Hospitals.

"Medical necessity" means that the use of the inpatient setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.

"VDH" means the Virginia Department of Health.

2. It shall be documented that treatment is medically

necessary and that the necessity was identified as a result of an EPSDT screening which occurred prior to the initiation of the psychiatric admission. Required patient documentation shall include, but not be limited to, the following:

a. Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.

b. Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.

c. For admission to a psychiatric facility, for psychiatric services, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR § § 441.153 or 441.156 that:

(1) Ambulatory care resources available in the community do not meet the recipient's treatment needs;

(2) Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR § 441.152.

3. The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization.

4. Providers of inpatient psychiatric services must be:

a. Accredited by JCAHO as a psychiatric facility or program (42 CFR 440.160);

b. Must assure that services are provided under the direction of a physician (42 CFR 440.160); and

c. The facility must meet the requirements in 42 CFR Part 441 Subpart D.

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

o. Refund of Overpayments (continued)

(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 fact finding 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.

p. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, reimbursement shall be provided for services resulting from early and periodic screening, diagnostic, and treatment services. Reimbursement shall be provided for such other measures described in Social Security Act § 1905(a) required to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State Plan.

1. Payments to fee-for-service providers shall be the lowest of (i) State agency fee schedule; (ii) actual charge (charge to the general public); (iii) or Medicare (Title XVIII) allowances.

2. Payments to outpatient cost-based providers (referenced at 4.19B(d)) shall be on the basis of reasonable costs in accordance with the standards and principles applicable to the Title XVIII Program as referenced in 4.19B(d).

3. Inpatient psychiatric services for individuals under age 21 (42 CFR 440.160) shall be reimbursed at a uniform all-inclusive per diem fee and shall apply to all service providers. The fee shall be all-inclusive to include physician and pharmacy services. The methodology to be used to determine the per diem fee shall be as follows. The base period uniform per diem fee for long-term inpatient psychiatric services shall be the median (weighted by children's admissions in State-operated psychiatric hospitals) variable per day cost of long-stay State-operated psychiatric hospitals in the fiscal year ending June 30, 1990. The base period per diem fee shall be updated each year using the hospital market basket factor utilized in the reimbursement of acute care hospitals in the Commonwealth.

* * * * * * * *

Title of Regulation: **State Plan for Medical Assistance Relating to the Omnibus Budget Reconciliation Act of 1990.**
VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.
VR 460-02-2.6100. Eligibility Conditions and Requirements.
VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care.

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

Effective Dates: July 1, 1991 through June 30, 1992.

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 bring the State Plan for Medical Assistance into conformance with the latest Congressional mandates which are to be effective July 1, 1991, 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.

Bruce U. Kozlowski, Director
Date: May 16, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: May 28, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 15, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 19, 1991

DISCUSSION

6. BACKGROUND: The Omnibus Budget Reconciliation Act of 1990 (OBRA 90) required a number of changes in the State Plan for Medical Assistance to be effective July 1, 1991. These requirements are discussed in the order of Eligibility, and Provider Reimbursement. The Department of Medical Assistance Services (DMAS) is submitting the accompanying federal filing package, State Plan Amendments 91-14 and 91-15, containing those issues which will become effective July 1, 1991.

Eligibility

i. Mandatory Phased-in Coverage of Children up to 100% of Poverty: (Effective July 1, 1991) Section 4601 of OBRA 90 requires States to provide Medicaid to all children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age whose family income is below 100% of the Federal Poverty Income Guidelines.

The Act allows States to impose a resource limit on these individuals; however, Virginia has not chosen to do so because studies of this population have shown that the expected savings is minimal when considered in the light of the additional administrative cost of obtaining and evaluating the resource information.

ii. Disabled Widows and Widowers: (Effective July 1, 1991) OBRA 90 § 5103 created a new Medicaid eligibility group by eliminating the special, more restrictive disability test for disabled widows and widowers, and for disabled surviving divorced spouses. Prior to the enactment of § 5103, these individuals could not be eligible for Title II benefits unless they were unable to perform any gainful activity. This requirement is changed to conform with the standard definition of disability, which requires that individuals be unable to perform any substantially gainful activity.

Many of these individuals, upon becoming eligible for Title II, will lose Supplemental Security Income (SSI) (and categorical Medicaid) because of increased income. Section 5103 provides that individuals who lose SSI or a State Supplementary Payment (SSP) because of receipt of a Title II benefit resulting from the change in the definition of disability will be deemed to be receiving SSI/SSP if:

- they were receiving SSI/SSP for the month prior to the month they began receiving the Title II benefit;
- they would continue to be eligible for SSI/SSP if the amount of the Title II benefit were not counted as income; and
- they are not entitled to Medicare Part A.

Individuals who meet the above requirements are eligible for Medicaid as categorically needy.

In addition, § 5103 provides that each month of eligibility for SSI/SSP will count toward the individual's five-month disability waiting period and 24-month Medicare waiting period. This means that the normal wait for entitlement to disability benefits and/or Medicare can be greatly reduced or even eliminated, depending on the length of time the

individual has been receiving SSI/SSP benefits. In other words, individuals who meet the eligibility criteria described above may or may not actually be eligible for categorical Medicaid, depending on when they become entitled to Medicare Part A based on a reduced waiting period.

Provider Reimbursement

i. Outlier Adjustment Payments: (Effective July 1, 1991) Section 4604 of OBRA 90 requires that State Plans, which reimburse inpatient hospital services on a prospective basis, provide for an outlier adjustment payment for certain medically necessary inpatient hospital services. Specifically, these services involve exceptionally high costs or exceptionally long lengths of stay for (i) infants younger than one year of age in all hospitals, and (ii) children younger than six years of age in disproportionate share hospitals. The Plan (Attachment 4.19 A) currently provides for an outlier adjustment for exceptionally high costs for infants younger than one year of age in disproportionate share hospitals only.

Supplement 1 to Attachment 3.1 A & B (the Amount, Duration, and Scope of Services) currently provides for unlimited medically necessary days for children younger than 21 years because of the well child screening program (Early and Periodic Screening, Diagnosis, and Treatment).

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 its requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency will promulgate permanent final regulations in conformance to § 9-6.14:4.1(C) 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 July 1, 1991, effective date 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.

Eligibility

i. Mandatory Phased-in Coverage of Children up to 100% of Poverty: (Effective July 1, 1991) Agency calculations used an estimate of 17,436 eligibles. These eligibles were then phased in on a monthly basis for 1992. The number of new eligibles each month was estimated to be 1,453. The Department of Planning and Budget's analysis used a calculation of participants rather than eligibles. It was assumed that 75% of those eligible would, in fact, participate. The number of new participants each month was 1,089.75 (1,453 x 75% = 1,089.75) The total new participants was estimated to be 13,077.

	GF	NGF	TOTAL
1992	$1,612,928	$1,612,928	$3,255,856

ii. Disabled Widows and Widowers: (Effective July 1, 1991) No fiscal impact of this change is anticipated because the disabled widows, widowers, and divorced spouses must have already been eligible for SSI and thus they already qualified for Medicaid. This legislation merely extends Medicaid eligibility after they lose SSI and begin receiving Title II benefits. Because they would have continued to receive SSI and Medicaid without this legislation, changing entitlement from SSI to Title II will not result in additional expenditures.

Provider Reimbursement

i. Outlier Adjustment Payments: (Effective July 1, 1991) DMAS projections for FY 92 for outlier adjustments in payment amounts to all hospitals for exceptionally high costs for infants younger than one year of age are:

	FY 92
GF	$ 73,103
NGF	$ 73,103
Total	$146,206

DMAS projections for FY 92 for outlier adjustments in payment amounts to disproportionate share hospitals for exceptionally high costs for children between one and six years of age are:

	FY 92
GF	$ 85,494
NGF	$ 85,494
Total	$170,988

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action. From its effective date of July 1, 1991, 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 bring the State Plan for Medical Assistance

into conformance with these mandates of OBRA 90.

10. APPROVAL SOUGHT for VR 460-02-2.2100 and 460-02-4.1910.

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. The regulations appear in the order of their discussion in this Decision Brief.

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

Attachment 2.2 A
page 9a

Agency	Citation(s)		Groups Covered
IV-A	§1634(d)	19a.	Disabled widows or widowers deemed to be eligible for SSI/SSP because they become ineligible for benefits under SSI/SSP due to receipt of a Title II benefit resulting from the change in the definition of disability if:
			They were receiving SSI/SSP for the month prior to the month they began receiving the Title II benefit;
			They would continue to be eligible for SSI/SSP if the amount of the Title II benefit were not counted as income and
			They are not entitled to Medicare Part A.

TN No. 91-14 Approval Date Effective date 7/1/91
Supersedes
TN No. N/A

VR 460-02-2.2100. Groups Covered and Agencies Responsible for Eligibility Determination.

Revision: HCFA-PM-87-4 (BERC)
MARCH 1987

ATTACHMENT 2.2-A
Page 17a
OMB NO.: 0938-0193

Agency*	Citation(s)	Groups Covered
IV-A	1902(a)(10)(A)(ii)(IX) and 1902(l) of the Act, P.L. 99-509 (Sections 9401(a) and (b))	X 13. The following individuals who are not described in section 1902(a)(10)(A)(i) of the Act whose income level (established at an amount up to 100 percent of the Federal nonfarm poverty line) specified in Supplement 1 to ATTACHMENT 2.6-A for a family of the same size, including the woman and infant or child and who meet the resource standards specified in Supplement 2 to ATTACHMENT 2.6-A: (a) Women during pregnancy (and during the 60-day period beginning on the last day of pregnancy) and infants under one year of age (effective April 1, 1987); ____ (b) Children who have attained one year of age but not attained two years of age (effective October 1, 1987); ____ (c) Children who have attained two years of age but not attained three years of age (effective October 1, 1988); ____ (d) Children who have attained three years of age but not attained four years of age (effective October 1, 1989); ____ (e) Children who have attained four years of age but not attained five years of age (effective October 1, 1990). Infants and children covered under Items 13 (a) through (e) above who are receiving inpatient services on the date they reach the maximum age for coverage under the approved plan will continue to be eligible for inpatient services until the end of the stay for which the inpatient services are furnished.
IV-A	1902(l)(1)(D)	XX 13.1 Children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age whose income level (established at an amount up to 100% of the Federal poverty line) specified in Supplement 1 to Attachment 2.6 A for a family of the same size.

*Agency that determines eligibility for coverage.

TN No._____ Approval Date _____ Effective date_____
Supersedes
TN No._____

VR 460-02-2.6100. Eligibility Conditions and Requirements.

B. INCOME ELIGIBILITY LEVELS--CATEGORICALLY NEEDY GROUPS WITH INCOMES UP TO FEDERAL POVERTY LINE

1. Children who have attained age 6 but have not attained age 19 born after Sept. 30, 1983.

The levels for determining income eligibility for groups of children under the provisions of § 1902(l)(1)(D) of the Act are as follows:

Based on 100 percent of the official Federal nonfarm income poverty line:

Size of Family Unit	Poverty Guideline
1	$ 6,620
2	8,880
3	11,140
4	13,400
5	15,660
6	17,920
7	20,160
8	22,440

VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care.

~~(8) DMAS shall pay to disproportionate share hospitals (as defined i V. (7) above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs for individuals under one year of age. The adjustment shall be calculated as follows:~~

~~(a) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals under one year of age. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital an education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.~~

~~(b) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals under one year o age. Any hospital which qualifies for the extensive neonatal care provision (as governed by V.(6), above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals under one year of age.~~

~~(c) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (b) above.~~

~~(d) DMAS shall pay as an outlier adjustment to each eligible hospita all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.~~

~~Pursuant to section 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for medically necessary stays for individuals under one year of age.~~

(8) Outlier adjustments.

a. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

b. DMAS shall pay to disproportionate share hospitals (as defined in V(7) above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

c. The outlier adjustment calculation.

(1) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(2) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. Any hospital which qualifies for the extensive neonatal care provision (as governed by V(6), above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in

(8) a or b above.

(3) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (8) c (ii) above.

(4) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

Pursuant to section 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for medically necessary stay for individuals under six years of age.

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Title of Regulation: **State Plan for Medical Assistance Relating to Fee-for-Service Reimbursement for Home Health Services.**
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.

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

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled "Fee-for-Services Reimbursement for Home Health Services". This home health services policy supports the agency's recently implemented utilization control and preauthorization activities.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding home health services fee-for-services reimbursement methodology. 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: May 31, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 11, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 15, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 19, 1991

DISCUSSION

6. BACKGROUND: The purpose of this action is to amend the State Plan for Medical Assistance by changing the reimbursement methodology for home health services to fee-based rather than cost-reimbursed. The section of the State Plan affected by this action is Attachment 4.19 B, Methods and Standards for Establishing Payment Rates–Other Types of Care.

Home health services are provided by certified and licensed home health agencies (HHAs) on a part-time or intermittent basis to recipients in their residences. A recipient's residence excludes a hospital or nursing facility. The Department of Medical Assistance Services (DMAS) has provided reimbursement for home health services for recipients since 1969 when it became a federally mandated service.

Effective January 1, 1991, DMAS implemented utilization control and preauthorization procedures for home health services. These procedures were designed to prevent unnecessary use of services and to ensure that rendered care meets established written criteria and quality standards. The proposed fee-based reimbursement system ensures that efficiencies reflected in the new service utilization methodology are fully integrated with corresponding efficiencies in the reimbursement methodology.

Effective July 1, 1991, DMAS proposes to reimburse HHAs at a flat rate per visit for each type of service rendered by HHAs (i.e., licensed nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, medical equipment and supplies left in the home and "extraordinary" transportation costs will be paid at specific rates. The payment rates must not exceed the providers' charges (charge to the general public). The following discusses the methodology of the fee-for-service reimbursement methodology.

DMAS will establish a flat rate for each level of service for those HHAs situated in one of three peer groups. These peer groups will be determined by the geographic location of the HHA's operating office and will be classified as: URBAN, RURAL, or NORTHERN VIRGINIA. The use of the Health Care Financing Administration (HCFA) designation of urban metropolitan statistical areas (MSAs) will be incorporated in determining the appropriate peer group for these classifications.

A separate peer grouping shall be established within each peer group to distinguish between freestanding and hospital-based HHA's. This will account for the highe

costs of hospital-based agencies resulting from Medicare cost allocation requirements. The Department of Health's (DOH) agencies will be established in a separate peer group due to their unique cost characteristics (only one consolidated cost report is filed for all DOH agencies). Rates will be calculated as follows:

a. Each HHA will be placed in its appropriate peer group.

b. HHAs' Medicaid cost per visit (exclusive of medical supplies costs) will be obtained from the 1989 cost-settled Medicaid cost reports. Costs will be inflated to a common point in time (June 30, 1991) by using the percent of change in the moving average factor from the Data Resources, Inc. (DRI) National Tables, Market Basket Index of Operating Costs for Home Health Agencies.

c. HHAs per visit costs weighted by the number of Medicaid visits per discipline will be ranked and a median determined for each peer group.

d. The fee schedule shall be adjusted annually on January 1st, based on the DRI-National HHA forecast factor for the change in the moving average.

Billable durable medical equipment and supplies, defined as equipment and supplies remaining in the home beyond the time of the visit, will be reimbursed separately. To bill for durable medical equipment (DME), the agency must also be enrolled as a DME vendor.

Extraordinary transportation costs to and from the recipient's home may be recovered by the home health agency if the recipient resides outside of a 15-mile radius of the home health agency. Payment will be set at a rate per mile as established by the General Services Administration in the Federal Travel Regulations, which are published in the Federal Register, times the excess mileage over the 15-mile radius. If a visit is within the 15-mile radius, the transportation cost is included in the visit rate; therefore, no additional reimbursement for transportation will be made. In order for a home health agency to receive reimbursement for transportation, the recipient must be receiving Medicaid home health services.

Home health agencies will be required to file a "Final Medicaid Cost Report" to allow DMAS to cost-settle providers' cost reports based upon the retrospective reimbursement methodology through June 30, 1991. Effective July 1, 1991, HHAs will be paid at rates established as outlined above.

The implementation of this reimbursement methodology requires billing changes and a significant change in the Medicaid Management Information System (MMIS). Each provider will have separate payment rates based upon categories of visits (such as assessment visit, follow-up visit, or comprehensive care) as follows:

1. Nursing Care - Rate Per Visit/Per Category
2. Physical Therapy - Rate Per Visit/Per Category
3. Speech-Language Pathology - Rate Per Visit/Per Category
4. Occupational Therapy - Rate Per Visit/Per Category
5. Home Health Aide - Rate Per Visit
6. Durable Medical Equipment - Rate Per Item and Supplies
7. Extraordinary - Rate Per Mile Transportation 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 Code of Federal Regulations, Title 42, Part 447, Subpart B, grants states the authority to change methods and standards for setting payment rates for all covered services.

Implementation of the proposed new reimbursement system would enable the Department to achieve optimum value from the utlization review and preauthorization procedures recently effected. Approval of an emergency regulation would provide for total synchronization of all utilization control efforts by July 1, 1991. 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.

8. FISCAL/BUDGETARY IMPACT: This emergency regulation is budget neutral. This policy change is expected to produce cost avoidance in future years, which will be reflected in DMAS' budget forecast.

A flat rate reimbursement system with add-ons for billable medical supplies and transportation should have a minimal effect on Medicaid recipients as long as strong utilization review procedures are implemented to monitor the delivery and quality of home health services. This system is expected to increase access for some recipients because additional reimbursement associated with transportation and medical supplies will provide incentive for HHAs to render services in rural areas. HHA reporting requirements will not be significantly affected because detailed recordkeeping is already required by Medicare.

Changes are being made to the computerized surveillance subsystem (SURS) to allow the compilation of home health providers' billing and recipients' services activities and to highlight exceptional activities for manual

review.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective July 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 change the reimbursement methodology for home health services.

10. Approval Sought for VR 460-02-4.1920.

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

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)~~ *(2)* Outpatient hospital services excluding laboratory

~~(4)~~ *(3)* 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)~~ *(4)* Rehabilitation agencies

~~(6)~~ *(5)* Comprehensive outpatient rehabilitation facilities

~~(7)~~ *(6)* Rehabilitation hospital outpatient services.

e. Fee-for-service providers. (1) Payment for the following services shall the lowest of: State agency fee schedule, actual charge (charge to the general public), or Medicare (Title XVIII) allowances:

(a) Physicians' services

(b) Dentists' services

(c) Mental health services including: Community mental health services; Services of a licensed clinical psychologist; Mental health services provided by a physician

(d) Podiatry

(e) Nurse-midwife services

(f) Durable medical equipment

(g) Local health services

(h) Laboratory services (Other than inpatient hospital)

(i) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

(j) X-Ray services

(k) Optometry services

(l) Medical supplies and equipment

(m) Home health services: Effective June 30, 1991, cost reimbursement for home health services is eliminated. The rate per visit adjusted annually on or about January 1 based on the percent of change in the moving average of Data Resources Inc. national forecast tables for the Home Health Agency market basket determined in the third quarter of the previous calendar year.

(2) Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII and take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual.

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Title of Regulation: **State Plan for Medical Assistance Relating to Reimbursement Adjustment for Non-Emergency Care in ERs.**
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Reimbursement Adjustment for Non-Emergency Care Provided in Emergency Rooms. This policy will adjust reimbursement to facilities and physicians for non-emergency care rendered in the emergency room setting.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Reimbursement Adjustment for Non-Emergency Care Provided in Emergency Rooms. 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: May 29, 1991

3. CONCURRENCES:
/s/ Howard M. Cullum
Secretary of Health and Human Resources:
Date: June 4, 1991

4. GOVERNOR'S ACTION:
/s/ Lawrence Douglas Wilder
Governor
Date: June 15, 1991

5. FILED WITH:
/s/ Joan W. Smith
Registrar of Regulations
Date: June 19, 1991

DISCUSSION

6. BACKGROUND: The section of the State Plan affected by this emergency regulation is Attachment 4.19 B Methods and Standards for Establishing Payment Rates–Other Types of Care concerning adjusting the reimbursement for non-emergency services when rendered by emergency rooms (ER) and ER physicians.

Inappropriate use of the emergency room for non-emergency primary care is a problem for hospitals, physicians, and third-party payers. This inappropriate use results in higher medical costs, decreased efficiency of care and service delivery compared with care delivered by the patient's primary care physician, and the overcrowding of emergency room facilities.

The Department of Medical Assistance Services (DMAS) is implementing a reimbursement reduction for non-emergency services provided in the emergency room setting. The reimbursement reduction will be applied to both the facility fee and the physician fee. The intent of the program is to ensure non-emergency services provided in the emergency room are reimbursed at a rate approximating the reimbursement for that service had it been provided in a more appropriate setting; for example, the physician's office. The reimbursement rate may be conditional upon the review of emergency-related diagnosis or trauma diagnosis codes and the necessary documentation supporting the need for emergency services. The appropriate reimbursement rate will be assigned by the Medicaid claims processing system, in conjunction with a manual review of selected claims, based upon the International Classification of Diseases, 9th Revision, Clinical Modification coding methodology (ICD-9-CM). Two categories will be used: 1) pay the claim at the existing emergency rate for emergency services; 2) pay the claim at the non-emergency rate for non-emergency services.

The reimbursement categories are based upon the ICD-9-CM diagnosis code. These codes are determined by the physician's diagnosis and assigned by the facility prior to the submission of the claim. For this program, DMAS assigned ICD-9-CM codes to two lists, one representing diagnosis codes that are true emergencies and the other, diagnosis codes that may be true emergencies if they meet certain criteria. Diagnosis codes that appear on the second list will be reviewed to determine the emergency or non-emergency nature of the visit. Diagnosis codes that were not assigned to either list represent diagnoses for which the emergency room is not the most appropriate setting for care.

The review of the diagnosis codes to determine the list to which they were assigned was accomplished by a DMAS work group comprised of experienced physicians and nurse utilization review analysts. Information was obtained from other Medicaid agencies with similar programs in place. In addition, consultation and advice was sought from representatives of hospitals and emergency room physicians through the Virginia Hospital Association (VHA) and the American College of Emergency Room Physicians (ACEP).

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) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

This amendment was approved by the Board of Medical Assistance Services in August, 1991, for inclusion in the DMAS' submission to the Governor's budget as a cost management initiative. 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 July 1, 1991, effective date.

8. FISCAL/BUDGETARY IMPACT: There were 282,000 hospital emergency room claims filed in 1990. Research done on the utilization of emergency rooms for non-emergency services indicates a range of from 11% to 61% non-emergency visits. For this program, DMAS has estimated that 26% of the emergency room visits are for non-emergency services. The actual percentage of visits that will be identified as non-emergencies is difficult to determine in advance, as some percentage of the claims that are held for review will be deemed non-emergency claims. In addition, it is anticipated that the distribution of the diagnosis codes will change over time as the program remains in effect.

A flat rate payment schedule for both physician and hospital emergency room payment for non-emergency services will be implemented. For all non-emergency claims for services delivered in the emergency room, DMAS will pay an all-inclusive fee to the hospital. This fee will approximate the fee for an intermediate emergency room visit. All-inclusive is defined as all emergency room and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services. Lab services will continue to be reimbursed under the existing system of rates. Claims identified as emergencies will be reimbursed under existing rates.

For all non-emergency claims for services delivered by an emergency room physician in the emergency room setting, DMAS will pay an all-inclusive fee. This fee will approximate the payment made for a brief physician office visit for a new patient. For physician claims identified as emergencies, reimbursement will continue under the existing rates.

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 July 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 adjust reimbursement to facilities and physicians for non-emergency care rendered in the emergency room setting.

10. APPROVAL SOUGHT for VR 460-02-4.1920.

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 460-02-1920. 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) 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 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 447.32. 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 noncovered as a component of 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 o

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)~~ *(2)* Outpatient hospital services excluding laboratory

(a) Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency room and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with the Code of Virginia, Chapter 10, Title 32.1, §§ 32.1-323 et seq.

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

(b) Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse for non-emergency care rendered in emergency rooms at a reduced rate.

(i) A reduced but all-inclusive reimbursement rate, with the exception of laboratory services, shall be applied by DMAS to services rendered in emergency rooms which are determined to be non-emergency care.

(ii) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(iii) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (ii) above. Services not meeting certain criteria shall be paid under the methodology of (i) above. Such criteria shall include, but not be limited to:

(A.) The initial treatment following a recent obvious injury.

(B.) An injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(C.) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilipticus, or other conditions considered life-threatening.

(D.) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(E.) Acute vital sign changes as specified in the provider manual.

(F.) Severe pain would support an emergency need when combined with one or more of the other guidelines.

(iv.) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(v.) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

~~(4)~~ *(3)* 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)~~ *(4)* Rehabilitation agencies

~~(6)~~ *(5)* Comprehensive outpatient rehabilitation facilities

~~(7)~~ *(6)* Rehabilitation hospital outpatient services.

e. Fee-for-service providers. (1) 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:

(a) Physicians' services (Supplement 1 has obstetric/pediatric fees.)

The following limitations shall apply to emergency physician services.

(a) Definitions. The following words and terms, when used in this regulation, shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

"DMAS" means the Department of Medical Assistance Services consistent with the Code of Virginia, Chapter 10, Title 32.1, §§ 32.1-323 et seq.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury which has occurred less than 72 hours prior to the emergency room visit.

(b) Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency rooms and reimburse physicians for non-emergency care rendered in emergency rooms at a reduced rate.

(i) A reduced but all-inclusive reimbursement rate shall be applied by DMAS to services rendered by physicians in emergency rooms which are determined to be non-emergency care.

(ii) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(iii) Services determined by the attending physician which may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for (ii) above. Services not meeting certain criteria shall be paid under the methodology of (i) above. Such criteria shall include, but not be limited to:

(A.) The initial treatment following a recent obvious injury.

(B.) An injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(C.) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestional hemorrhage, spontaneous abortion, loss of consciousness, status epilipticus, or other conditions considered life-threatening.

(D.) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(E.) Acute vital sign changes as specified in the provider manual.

(F.) Severe pain would support an emergency need when combined with one or more of the other guidelines.

(iv.) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(v.) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

(b) Dentists' services

(c) Mental health services including: Community mental health services; Services of a licensed clinical psychologist; Mental health services provided by a physician

(d) Podiatry

(e) Nurse-midwife services

(f) Durable medical equipment

(g) Local health services

(h) Laboratory services (Other than inpatient

hospital)

(i) Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling)

(j) X-Ray services

(k) Optometry services

(l) Medical supplies and equipment

(m) Home health services: Effective June 30, 1991, cost reimbursement for home health services is eliminated. The rate per visit shall be adjusted annually on or about January 1 based on the percent of change in the moving average of Data Resources Inc. national forecast tables for the Home Health Agency market basket determined in the third quarter of the previous calendar year. **

(2) Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII and take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual.

**emergency regulation

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Title of Regulation: **State Plan for Medical Assistance Relating to Reduction of Threshold Days for Hospital Utilization Review.**
VR 460-03-3.1100. Amount, Duration, and Scope of Services.

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

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Reduction of Threshold Days for Hospital Utilization Review. This policy is expected to increase the number of inpatient hospital days which, when reviewed by utilization review analysts, result in denied payments.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Reduction of Threshold Days for Hospital Utilization Review. 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: May 9, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: May 29, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 15, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 19, 1991

DISCUSSION

6. BACKGROUND: The section of the State Plan for Medical Assistance affected by this regulatory action is the Amount, Duration, and Scope of Services narrative (Attachment 3.1 A & B Supplement 1) for inpatient hospital services.

The Department of Medical Assistance Services (DMAS) adopted its current limits on inpatient hospital lengths of stay in 1982. 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. Each of these claims is reviewed before payment by hospital utilization review analysts and all days determined not to be medically necessary are denied. The hospital is notified of these reduced days in its remittance vouchers.

The Board of Medical Assistance Services, in response to the Administration's directive to identify potential cost management initiatives, directed DMAS to implement this policy change. This emergency regulation reduces the threshold for review placed on inpatient hospital lengths of stay from 14 days to 7 days thereby increasing the number of claims requiring manual prepayment review. Hospitals will now be required to attach medical justification for all claims for lengths of stay exceeding 7 days. Under the authority of this new policy, fewer inpatient hospital claims will be paid automatically by the computerized billing system and a decrease in allowable days is expected after manual review.

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) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process

contained in Article 2 of the APA.

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 needed July 1, 1991, effective date in support of the cost savings projections.

8. FISCAL/BUDGETARY IMPACT: The major impact of reducing hospital UR days below the existing 14 is to increase the number of pended claims by approximately 18,000 per year. This may result in fewer hospital claims paid automatically by the computer system and may result in fewer allowable hospital days. The additional pended claims will require manual review requiring an estimated 2 additional utilization review analysts. The net savings is projected to be approximately $4.0 million ($2.0 million NGF; $2.0 million GF).

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective on July 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 reduce threshold days for hospital utilization review.

10. APPROVAL SOUGHT for VR 460-03-3.1100.

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. 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 (length-of-stays) 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~~ *8* 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~~ *7* days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to item F below.)

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 item F below.)

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 ~~(1)~~ day prior to surgery, unless medically justified. Hospital claims with an admission date more than one ~~(1)~~ 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 pre-operative 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 twenty-one (21) years of age, who are Medicaid eligible, for medically necessary stays in acute care

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 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 performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The Department shall conduct periodic on-site post payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the Department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the Department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The Department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

A. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

1. Are furnished to outpatients;

2. 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

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Title of Regulation: **State Plan for Medical Assistance Relating to Case Management for the Elderly. VR 460-03-3.1102. Case Management Services.**

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

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Case Management for the Elderly. This policy will conform the State Plan to the 1991 Appropriations Act, Item 431 B which directed the Long Term Care Council to implement a statewide case management system for elderly Virginians.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Case Management for the Elderly. 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: June 7, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 11, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 15, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 19, 1991

DISCUSSION

6. BACKGROUND: The 1990 General Assembly directed the Long-Term Care Council, chaired by the Secretary of Health and Human Resources, to develop policy and implementation guidelines for a statewide Case Management System for Elderly Virginians. Appropriations were given to fund pilot projects in FY 92. In developing these pilot projects, the Council was directed to consider the following principles adopted by the Subcommittee on Long-Term Care of the Joint Subcommittee on Health Care for All Virginians:

- all elderly citizens should be eligible for services on a sliding fee basis;
- the use of Medicaid funds should be optimized;
- case managers should serve as brokers for all private and public services in long term care;
- the program should promote public/private partnerships;
- a uniform assessment tool which can be incorporated into a statewide data base should be used;
- the program should be responsive to varying local demands; and
- the most cost-effective forms of care should be used.

During early 1991, the Long-Term Care Council issued a Request for Proposals and three proposals were selected for funding during FY 92. These three pilots represent an urban area, a rural area and a pilot including both urban and rural areas.

Because the Subcommittee on Health Care for All Virginians directed that the pilot projects use Medicaid funding where feasible, this amendment to the State Plan for Medical Assistance is being submitted. The qualifications of the case manager are those appearing in the Request for Proposal (RFP) published by the Long-Term Care Council. The target group follows that of the RFP except that the individuals must be dependent in 3 or more of specific activities of daily living. Medicaid is being directed toward a more dependent group of individuals than the overall group specified in the RFP because of the large number of Medicaid eligible individuals age 60 and over in the geographic areas within the approved pilot programs. Because the state matching funds are limited, it will be necessary to define the target population for Medicaid coverage more narrowly. Without this limit, it will be difficult to assure that Medicaid payments will not exceed the amount allotted to Medicaid from the funds appropriated for the pilot.

Because the pilot areas were not selected by the Long-Term Care Council until early in May, it was not possible to complete the regulatory development in time to comply with the public notice requirements of the Virginia Administrative Process Act. For that reason, the Governor is being requested to approve the adoption of emergency regulations in order to implement the program on July 1, 1991 as directed by the General Assembly.

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) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

Item 431 B of the 1991 Appropriations Act directed the Long-Term Care Council to implement a statewide Case Management System for Elderly Virginians. The Act directed that the Council be guided by the principles

regarding the case management system that are contained in the recommendations of the SJR 214 Report (1990) which included the principle that the use of Medicaid funds should be optimized.

8. FISCAL/BUDGETARY IMPACT: The three pilot projects selected by the Long-Term Care Council include: Fairfax County and the cities of Fairfax and Falls Church; Planning Districts 1, 2, 3 (except for Washington County and the City of Bristol), 4, 17, 18, 20, 21, 22. These areas include 33,635 Medicaid eligible individuals age 60 and over.

Analyzing nursing home preadmission screening information and information on the number of individuals currently served in nursing homes and home and community-based waiver services, DMAS estimates that approximately 2,762 individuals will be referred for case management in the three pilot areas. The average duration of case management services of four months is based upon the advice of experts in the field now serving this population. The fee for case management has been set at $100 per month.

The Department estimates that case management pilot programs will begin admitting clients to case management in July, 1991. However, it is anticipated that the pilot projects will not reach the full caseload until the beginning of the second quarter of the fiscal year. Thereafter it is anticipated that the pilots will serve a total average monthly caseload of 920 cases.

July	230
August	460
September	690
October	920
November	920
December	920
January	920
February	920
March	920
April	920
May	920
June	920

This caseload results in 9,660 client months of service during FY 92. 9,660 x $100 = $966,000 estimated total expenditures for case management services to Medicaid eligible individuals. $500,000 GF have been set aside from the $2 million appropriated for the case management pilots to provide the state matching funds for Medicaid. The federal matching rate is 50%. Therefore, there is $1 million available for Medicaid case management payments.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective on July 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 make payments for case management services for elderly Virginians in the pilot areas.

10. Approval Sought for VR 460-03-3.1102.

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 460-03-3.1102. Case Management Services.

§ 6. Case Management for the Elderly.

A. Target Group: Persons age 60 and over who have been screened through a Case Management Pilot Project approved by the Long Term Care Council and found to be dependent in 3 or more of the following activities of daily living: (a) bathing, (b) dressing, (c) toileting, (d) continence, or (e) eating.

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:

a. Fairfax County, and the cities of Falls Church and Fairfax;

c. Planning Districts 1, 2, 3 (except for Washington County and the City of Bristol), 4, 17, 18, 20, 21, 22.

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 1915(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:

1. Assessment. Determining client's service needs, which include psychosocial, nutritional and medical.

2. Service Planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.

3. Coordination & Referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.

4. Follow-up & Monitoring. Assessing ongoing

progress, ensuring services are delivered, and periodically reassessing need to determine appropriate revisions to the case management plan of care.

E. Qualifications of Providers. To qualify as a provider of case management for the elderly, the provider of services must assure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The case manager must have these knowledge, skills, and abilities at the entry level which must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

1. Knowledge of:

a. Aging and the impact of disabilities and illnesses on aging;

b. Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;

c. Interviewing techniques;

d. Consumers' rights;

e. Local human and health service delivery systems, including support services and public benefits eligibility requirements;

f. The principles of human behavior and interpersonal relationships;

g. Effective oral, written and interpersonal communication principles and techniques;

h. General principles of record documentation;

i. Service planning process and the major components of a service plan.

2. Skills in:

a. Negotiating with consumers and service providers;

b. Observing, recording and reporting behaviors;

c. Identifying and documenting a consumer's needs for resources, services and other assistance;

d. Identifying services within the established services system to meet the consumer's needs;

e. Coordinating the provision of services by diverse public and private providers;

f. Analyzing and planning for the service needs of elderly persons;

3. Abilities to:

a. Demonstrate a positive regard for consumers and their families;

b. Be persistent and remain objective;

c. Work as a team member, maintaining effective inter-agency and intra-agency working relationships;

d. Work independently, performing position duties under general supervision;

e. Communicate effectively, verbally and in writing.

f. Develop a rapport and to communicate with different types of persons from diverse cultural backgrounds;

g. Interview.

4. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field, or be a licensed nurse. In addition, it is preferable that the case manager have two years of satisfactory experience in the human services field working with the elderly.

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.

H. Case Mangagement services to the elderly shall be limited to no more than 4 months without authorization from the Department of Medical Assistance Services.

* * * * * * * *

Title of Regulation: **State Plan for Medical Assistance Relating to Community Mental Health/Mental Retardation Services.**
VR 460-03-3.1120. Case Management Services.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.
VR 460-02-4.1920. Methods and Standards for Establishing

Payment Rates - Other Types of Care.
VR 460-04-8.1500. Community Mental Health Services. Amount, Duration, and Scope of Services.

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

Effective Dates: : July 1, 1991 through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled "Emergency Regulation for Community Mental Health/Mental Retardation Services" which will enable this Department to implement needed policy changes to resolve problems the Community Services Boards are experiencing in implementing the existing regulations, and to increase their Medicaid revenue.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Community Mental Health/Mental Retardation 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: June 14, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 21, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 25, 1991

DISCUSSION

6. BACKGROUND: The 1990 Appropriations Act (Item 466) directed the Department of Medical Assistance Services to cooperate with the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide Medicaid coverage for community mental health and mental retardation services in Virginia. The purpose of expanding the Medicaid program in this fashion was to obtain federal financial participation for some current programs and services as well as to meet future demand for treatment services. At a time of increasing fiscal constraints on state dollars, federal funding through Title XIX is the only mechanism available for addressing significant unmet service needs and continuing the Phase I Community Services initiative. In addition, such action enables the Commonwealth to make effective use of federal funds.

On October 1, 1990, as directed by the General Assembly, Medicaid began coverage of a package of community services under an emergency regulation. During subsequent months, the two Departments received feedback and resolved implementation problems associated with the emergency regulation, as identified by the Community Services Boards (CSBs). Some of the regulation's provisions presented implementation problems which could only be resolved by substantive change to the regulation itself.

The emergency regulation being proposed differs from the existing emergency regulation by including 23 provisions proposed by the Community Services Boards to simplify regulatory requirements imposed on the Boards, and to increase the services for which Medicaid reimbursement can be made. The result of implementing the changes to the existing emergency regulation will be to maximize Medicaid reimbursement and reduce to the extent possible, situations requiring the use of only General Funds. Examples of the types of changes being proposed include:

expanding the definition of 'mental retardation' to serve a broader population range;

removing complex and costly administrative requirements governing delivery of intensive, in-home services;

liberalizing caseload requirements for Therapeutic Day Treatment, thereby expanding the number of CSB programs able to qualify as Medicaid providers;

reducing case management levels from two to one, removing time-consuming record-keeping and streamlining reimbursement.

In addition to changes such as these originating with the Community Services Boards, the Health Care Financing Administration (HCFA) has directed several additional clarifications to the provisions of the original emergency regulation.

The extensive period of time required to "shake down" the original emergency regulation by gathering comments and proposed changes from CSBs in the field and HCFA has left insufficient time to complete the APA Process by the regulation's expiration date (October 1, 1991). Further, because the changes proposed by this package should create a profound positive impact by increasing federal Medicaid expenditures while reducing corresponding general fund expenditures, the new emergency regulation should become effective as soon as practicable (July 1, 1991).

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) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA.

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 achieve the earliest possible implementation date and maximize federal funding.

8. FISCAL/BUDGETARY IMPACT: This initiative is expected to result in a reduction in General Fund expenditures by the Department of Mental Health, Mental Retardation and Substance Abuse Services and help that Department achieve the savings predicted by the adoption of the Community Medicaid Initiative. Collections from Medicaid have not achieved the level predicted because the number of Medicaid-eligible individuals were overestimated and because some of the regulatory requirements produced inadvertent barriers to Medicaid claims for service.

The 1990 Appropriations Act designated $17,423,839 and $34,756,467 in federal match for the first and second years of the FY 90-92 Biennium respectively. In addition, the Appropriations Act designated General Fund dollars to transfer from community ICFs/MR to this initiative in the amounts of $787,500 and $3,150,000 for the first and second years of the Biennium respectively. The remaining General Fund dollars will be transferred from the DMHMRSAS budget.

This regulation will not increase General Funds expenditures. Instead, it will help assure that the federal matching funds planned for will be received by removing barriers to Medicaid coverage of Community Board services.

9. RECOMMENDATION: Recommend approval of this request to take an emergency adoption action to become effective, once filed with the Registrar of Regulations, on July 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 make the necessary changes in program requirements until full administrative process promulgation had been completed.

10. APPROVAL SOUGHT for VR 460-03-3.1120, 460-03-3.1300, 460-02-4.1920, 460-04-3.1100.

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.

§ 1. High risk pregnant women and children.

A. Target Group: To reimburse case management services for high-risk Medicaid eligible pregnant women and children up to age 1.

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 1915(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: The case management services will provide maternal and child health coordination to minimize fragmentation of care, reduce barriers, and link clients with appropriate services to ensure comprehensive, continuous health care. The Maternity Care Coordinator will provide:

1. Assessment - Determining clients' service needs, which include psychosocial, nutrition, medical, and educational factors.

2. Service Planning - Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.

3. Coordination & Referral - Assisting the client in arranging for appropriate services and ensuring continuity of care.

4. Follow-up & Monitoring - Assessing ongoing progress and ensuring services are delivered.

5. Education & Counseling - Guiding the client and developing a supportive relationship that promotes the service plan.

E. Qualifications of Providers: Local departments of social services, community health centers, rural health clinics, home health agencies, physicians and outpatient hospitals who have signed an agreement with Department

of Medical Assistance Services to deliver Maternity Care Coordination services. Qualified service providers will provide case management regardless of their capacity to provide any other services under the Plan. A Maternity Care Coordinator is the Registered Nurse or Social Worker employed by a qualified service provider who provides care coordination services to eligible clients. The RN must be licensed in Virginia and should have a minimum of one year of experience in community health nursing and experience in working with pregnant women. The Social Worker (MSW, BSW) must have a minimum of one year of experience in health and human services, and have experience in working with pregnant women and their families. The Maternity Care Coordinator assists clients in accessing the health care and social service system in order that outcomes which contribute to physical and emotional health and wellness can be obtained.

§ 2. Seriously mentally ill adults and emotionally disturbed children.

A. Target Group: The Medicaid eligible individual shall meet the DMHMRSAS definition for "serious mental illness", or "serious emotional disturbance in children and adolescents".

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

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 1915(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 health services. Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual 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 individualized service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

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 individuals' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

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 individuals with 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 health 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 individual's 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 health case management agency by the DMHMRSAS.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers. The case manager must possess a combination of mental health 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 nature of serious mental illness in adults and serious emotional disturbance in children and adolescents

(2) treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination

(3) different types of assessments, including functional assessment, and their uses in service planning

(4) consumers' rights

(5) local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups)

(6) types of mental health programs and services

(7) effective oral, written and interpersonal communication principles and techniques

(8) general principles of record documentation

(9) the service planning process and major components of a service plan

b. Skills in:

(1) interviewing

(2) observing, recording and reporting on an individual's functioning

(3) identifying and documenting a consumer's needs for resources, services and other supports

(4) using information from assessments, evaluations, observation and interviews to develop service plans

(5) identifying services within the community and established service system to meet the individual's needs

(6) formulating, writing and implementing individualized service plans to promote goal attainment for seriously mentally ill and emotionally disturbed persons

(7) negotiation 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

(6) establish and maintain ongoing supportive relationships

§ 3. Youth at risk of serious emotional disturbance.

A. Target Group: Medicaid eligible individuals who meet the DMHMRSAS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

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 1915(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 health services. Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;

2. Linking the individual directly to services and supports specified in the treatment/services plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

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 which are non-therapy contacts with an individual's significant others to promote treatment and/or community adjustment;

7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of Providers:

1. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, 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 individual's 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 health case management agency by the DMHMRSAS.

2. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers. The case manager must possess a combination of mental health 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 nature of serious mental illness in adults and serious emotional disturbance in children and adolescents

(2) treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination

(3) different types of assessments, including functional assessment, and their uses in service planning

(4) consumer's rights

(5) local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups)

(6) types of mental health programs and services

(7) effective oral, written and interpersonal communication principles and techniques

(8) general principles of record documentation

(9) the service planning process and major components of a service plan

b. Skills in:

(1) interviewing

(2) observing, recording and reporting on an individual's functioning

(3) identifying and documenting a consumer's needs for resources, services and other supports

(4) using information from assessments, evaluations, observation and interviews to develop service plans

(5) identifying services within the community and established service system to meet the individual's needs

(6) formulating, writing and implementing individualized service plans to promote 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

(6) establish and maintain ongoing supportive relationships

§ 4. Individuals with mental retardation.

A. Target Group. Medicaid eligible individuals who are mentally retarded as defined in state law.

1. An active client for mental retardation case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case managemen

for institutionalized individuals be billed for no more than two predischarge periods in twelve months.

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 1915(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. Assessment and planning services, to include developing a 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;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

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;

7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

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 seriously/chronic mental illness to the Community Services Boards only to enable them to provide services to seriously/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 individual's 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) treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination

(3) different types of assessments and their uses in program planning

(4) consumers' rights

(5) local service delivery systems, including support services

(6) types of mental retardation programs and services

(7) effective oral, written and interpersonal communication principles and techniques

(8) general principles of record documentation

(9) the service planning process and the major components of a service plan

b. Skills in:

(1) interviewing

(2) negotiating with consumers and service providers

(3) observing, recording and reporting behaviors

(4) identifying and documenting a consumer's needs for resources, services and other assistance

(5) identifying services within the established service system to meet the consumer's needs

(6) coordinating the provision of services by diverse public and private providers

(7) analyzing and planning for the service needs of mentally retarded persons

(8) formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation;

(9) Using assessment tools

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

(6) establish and maintain ongoing supportive relationships

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.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.

§ 10.0. Community mental health services.

A. Utilization review general requirements.

1. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. medical or clinical necessity of the delivered service;

2. the admission to service and level of care was appropriate;

3. the services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in Attachment 3.1 A and B, Supplement 1 § 13d Rehabilitative services;

4. delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

C. Mental health services utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at

VR 460-03-3.1100.

1. Intensive in-home services for children and adolescents:

a. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided in the client's residence; service must be recommended in the Individual Service Plan (ISP).

b. Services must be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

c. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation; and when the client's residence as the setting for services is more likely to be successful than a clinic.

d. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

e. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

f. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

g. The provider of intensive in-home services for children and adolescents must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

h. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home services is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the 5 hour a week minumum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive and/or non-home based services.

i. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

j. Emergency assistance shall be available 24 hours per day, seven days a week.

2. Therapeutic day treatment for children and adolescents.

a. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

(1) Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

(2) Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(a) this programming during the school day; or

(b) this programming to supplement the school day or school year.

(3) Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

(4) Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

(5) Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

b. The provider of therapeutic day treatment for child and adolescent services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

c. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

d. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e. before and/or after school and/or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled activities.

e. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

f. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP.

3. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse. The service may be initiated without an Individual Service Plan (ISP) modification or goal in a crisis situation. When this occurs, an ISP must be completed within 10 working days of service initiation.

a. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

b. The program must operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and/or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

4. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long term and/or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

a. The provider of psychosocial rehabilitation must be licensed by DMHMRSAS.

b. The program must operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but not more than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

c. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

5. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

a. The provider of crisis intervention services must be licensed as an Outpatient Program by DMHMRSAS.

b. Client-related activities provided in association with a face-to-face contact are reimbursable.

c. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

d. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

e. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

f. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. Crisis intervention may involve the family or significant others.

6. Case management.

a. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, service providers, significant others and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

b. The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

c. There shall be no maximum service limits for case management services.

d. The ISP must document the need for case management, and the case manager must review the ISP every 90 days. A 10-day grace period is allowable.

D. Mental retardation utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

1. Appropriate use of day health and rehabilitation services requires the following conditions must be met:

a. The service is provided by a program with an opera- tional focus on skills development, social learning and interaction, support, and supervision.

b. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

(1) managing personal care needs,

(2) understanding verbal commands and communicating needs and wants,

(3) earning wages without intensive, frequent and ongoing supervision or support,

(4) learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

(5) exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,

(6) making decisions which require informed consent,

(7) caring for other needs without the assistance or personnel trained to teach functional skills,

(8) functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

c. Services for the individual must be preauthorized every 6 months by DMHMRSAS.

d. Each individual must have a written plan of care developed by the provider, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

e. The provider must update the plan of care annually.

f. The individual's record must contain adequate documentation concerning progress or lack thereof

in meeting plan of care goals.

g. The program must operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

h. The provider must be licensed by DMHMRSAS.

2. Appropriate use of case management services for mentally retarded persons requires the following conditions to be met:

a. The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services must be obtained from DMHMRSAS Care Coordination Unit every 6 months.

b. An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and other entities including a minimum of one face-to-face contact within a 90-day period.

c. The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors.

(1) The plan of care shall be reviewed by the case manager at least at least every 90 days to ensure the identified needs are met and the required services are provided. A 10-day grace period is allowable.

(2) The need for case management services shall be assessed and justified through the development of an annual consumer service plan. Continued service justification shall be documented at the six-month review.

d. The individual's record must contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

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 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 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 460-04-8.1500. Community Mental Health Services. Amount, Duration, and Scope of Services.

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

"Board or BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the client of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the client's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with the Code of Virginia, Chapter 10, Title 32.1, §§ 32.1-323 et seq.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with the Code of Virginia, Chapter 1, Title 37, §§ 37.1-39 et seq.

"Developmental disability" means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan or ISP" means that which is defined in DMHMRSAS licensing regulations VR 470-02-09.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Significant others" means persons related to or interested in the individual's health, well being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

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

§ 2. Mental health services. The following services shall be covered: intensive in-home services; therapeutic day treatment for children and adolescents; day treatment/partial hospitalization; psychosocial rehabilitation; crisis intervention. These covered services are further defined below:

A. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service must be recommended on an Individual Service Plan (ISP).

3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. Intensive in-home shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.

6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

B. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 260 days, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills, and individual, group and family counseling. General program requirements shall be as follows:

1. The provider of therapeutic day treatment for child and adolescent services must be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

2. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

3. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e. before and/or after school and/or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled activities.

4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

C. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 260 days, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program must operate a minimum of two continuous hours in a 24 hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of th total daily time spent in the service for eac individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and/or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 312 days, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and/or education within a supportive and normalizing program structure and environment.

1. The provider of psychosocial rehabilitation must be licensed by DMHMRSAS.

2. The program must operate a minimum of two continuous hours in a 24-hour period. A unit

service is defined as a minimum of two but less than four hours on a given day. Two units of service are defined as at least four but less than seven hours in a given day. Three units are defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. Time allocated for field trips may be used to calculate time and units of service if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual and/or the family unit, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, pre-admission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization. General program requirements are as follows:

1. The provider of crisis intervention services must be licensed by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth scheduled face-to-face contact.

5. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed provided the provision of out-of-clinic services is clinically/pro- grammatically appropriate. Crisis intervention may involve the family or significant others.

§ 3. Mental retardation services. Day health and rehabilitation services shall be covered and the following definitions shall apply:

A. Day health and rehabilitation services (limited to 500 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider must be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

1. Self care and hygiene skills: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;

2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;

3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;

4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;

5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;

6. Environmental skills: training in punctuality, self-discipline, care of personal belongings, respect for property, remaining on task and adequate attendance;

training at actual sites where the skills will be performed;

7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills, developing/enhancing social skills in relating to the general population, peer groups;

8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;

9. Travel and related training to and from the training sites and service and support activities;

10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.

11. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

B. There shall be two levels of Day Health and Rehabilitation services: Level I and Level II.

1. Level I services shall be provided to individuals who meet the basic program eligibility requirements.

2. Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present.

a. The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention).

b. The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals.

c. The individual requires extensive personal care and/or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

§ 4. Provider Qualification Requirements. To qualify as a provider of services through DMAS for rehabilitative mental health or mental retardation services, 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 individual's 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. In addition to those requirements stated above, a provider must meet the following requirements specific to each disability area:

1. Mental Health.

a. Intensive in-home: licensure by DMHMRSAS as an outpatient program.

b. Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.

c. Day Treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.

d. Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.

e. Crisis Intervention: licensure by DMHMRSAS as an Outpatient Program

f. Case Management: certified by DMHMRSAS

2. Mental retardation.

a. Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program

b. Case Management: Certified by DMHMRSAS

§ 5. 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.

§ 6. 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.

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Title of Regulation: **State Plan for Medical Assistance Relating to Mortgage Debt Refinancing Incentive. VR 460-03-4.1940:1. Nursing Home Payment System.**

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

Effective Dates: July 1, 1991 through June 30, 1992.

Summary:

1. REQUEST: The Governor's approval is hereby requested to adopt the emergency regulation entitled Mortgage Debt Refinancing Incentive. This policy will amend § 2.4 of the Nursing Home Payment System (NHPS) to encourage the refinancing of mortgages when the refinancing benefits both the Commonwealth and the provider.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Mortgage Debt Refinancing Incentive. 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: June 18, 1991

3. CONCURRENCES:

/s/ Howard M. Cullum
Secretary of Health and Human Resources
Date: June 24, 1991

4. GOVERNOR'S ACTION:

/s/ Lawrence Douglas Wilder
Governor
Date: June 24, 1991

5. FILED WITH:

/s/ Joan W. Smith
Registrar of Regulations
Date: June 25, 1991

6. BACKGROUND: This emergency regulation modifies § 2.4 of the current Nursing Home Payment System (NHPS) in the State Plan for Medical Assistance.

The 1991 General Assembly mandated the Department of Medical Assistance Services (DMAS) to encourage nursing facilities to refinance mortgages when such action would benefit the Commonwealth and the provider.

Section 2.4 of the NHPS methodology currently provides that mortgage refinancing is permitted where the refinancing would result in a cost savings from lower rates. In other words, refinancing is permitted when it benefits the Commonwealth, but the provider has been given no specific incentive to refinance.

A DMAS study found that 18 of the responding providers had existing mortgage rates of between 11 percent and 15 percent. Nine of these providers have rates that are capped by existing interest rate upper limit provisions of the NHPS. Therefore, there are approximately nine facilities that could be affected by the amendment at this time.

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) § 9-6.14:4.1(C)(5), for this agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, the agency will promulgate permanent regulations with opportunity for public comment.

Section 1902(a)(13)(A) of the Social Security Act is implemented by Title 42 of the Code of Federal Regulations Part 447 Subpart C. This section "requires that the State Plan provide for payment for hospital and long-term care facility services through the use of rates that the state finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations and quality and safety standards and assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to ..[care].. of adequate quality."

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 by July 1, 1991, to give providers an incentive to refinance mortgages when the refinancing is beneficial to the Commonwealth and the provider.

8. FISCAL/BUDGETARY IMPACT: The proposed

refinancing formula requires the calculation of two index numbers for each nursing facility, the current financing index and the new financing index. The new financing index is the numerator and the current financing index is the denominator in determining the refinancing savings ratio. This ratio is subtracted from 1 to calculate the refinancing incentive factor. This factor is multiplied by the net interest savings for the FY in question to determine the refinancing incentive payment, which the Commonwealth would pay, subject to the terms and conditions of the State Plan, to the nursing facility once it agrees to refinance.

A review of information submitted by the nursing home community indicates that there are approximately nine facilities where a refinancing would benefit both the facility and the Commonwealth. The estimated gross refinancing savings over a ten-year period are approximately $8.0 million. After the application of the 83% weighted average Medicaid utilization rate for the nine facilities which might be affected, DMAS has estimated refinancing savings to the Medicaid program of approximately $6.6 million. The Commonwealth will have gross savings of approximately $3.3 million in General Funds over the ten-year period. The estimated savings in General Funds for FY 92, net of proposed incentive payments, is approximately $100,000.

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 July 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 effective emergency regulation, DMAS lacks the authority to permit providers to refinance mortgages.

10. APPROVAL SOUGHT for VR 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 regulation:

VR 460-03-4.1940:1. Nursing Home Payment System.

§ 2.4. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and result in a cost savings. The total net aggregate allowable costs incurred for all cost reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing Incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10 year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for the mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of Refinancing Incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of Net Savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of Incentive Amount. The net savings for the period, after deduction of any unamortized old loan costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under § 2.1 B. and C.

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with § 2.4 A. 1 through A. 4 for the incentive period. Should the calculation produce both positive and negative incentives, the

provider's total incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

B. Interest rate upper limit.

Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in Cragie Incorporated Municipal Finance Newsletter as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U. S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction financing committed to or permanent financing closed after December 31, 1986 but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable Interest Rate Upper Limit

a. The limitation set forth in § 2.4.B.1. and § 2.4.B.2. shall be applied to debt financing which bears a variable interest rate, as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date of committment for construction financing or date of closing for permanent financing.

b. If the interest rate for any cost reporting period is below the limit determined in "a." above, no adjustment will be made to the providers interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in "a." above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit", and shall submit such a schedule with each cost report.

4. The limitation set forth in § 2.4.B.1, 2, and 3 shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to five percent of the total allowable project costs:

a. Examination Fees

b. Guarantee Fees

c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)

d. Underwriters Discounts

e. Loan Points

7. The aggregate of the following financing costs shall be limited to two percent of the total allowable project costs:

a. Legal Fees

b. Cost Certification Fees

c. Title and Recording Costs

d. Printing and Engraving Costs

e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

AT RICHMOND, JUNE 19, 1991

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. PUC890014

Ex Parte: In the matter of allocating costs pursuant to paragraph 22 of the Experimental Plan for Alternative Regulation of Virginia Telephone Companies

ORDER PRESCRIBING TREATMENT OF INSIDE WIRING COSTS AND REVENUES

The Staff has informally advised the Commission that the Experimental Plan for Alternative Regulation of Virginia Telephone Companies ("Experimental Plan") does not clearly establish the appropriate treatment of complex and simple inside wiring costs and revenues. Therefore, the Commission will now prescribe the treatment of complex and simple inside wiring within the Plan for the participating companies.

Although the Experimental Plan does not specify treating complex inside wiring differently from simple inside wiring, our experience shows it is now necessary to do so. The Staff has proposed that "simple" be defined as the inside wiring associated with one and two line business and residential customers, and that "complex" be defined as the inside wiring associated with business and residential customers using more than two lines.

The Staff has further advised that it seems appropriate to treat both the installation and maintenance of complex inside wiring as preemptively deregulated services for cost and revenue allocations. Consequently, the costs and revenues associated with complex inside wiring would be excluded from a company's earnings for ratemaking pursuant to Paragraph 17 of the Plan. In other words, they would be treated the same as preemptively deregulated customer premises equipment (CPE), as set out in Paragraph 17b of the Experimental Plan. Simple inside wire should continue to be treated as actually competitive for (1) allocations pursuant to Paragraph 22, and (2) service and price monitoring. However, the accounting for all inside wiring costs and revenues should continue to follow Part 32 of the FCC's rules.

The Commission agrees with the Staff's proposed definitions of simple and complex inside wiring and with its proposed allocation treatment for all inside wiring costs and revenues.

IT IS THEREFORE ORDERED that the companies participating in the Experimental Plan treat business and residential inside wire associated with customers using more than two lines as complex inside wiring and, further, that they treat costs and revenues associated with complex inside wiring in the same manner as costs and revenues associated with preemptively deregulated CPE.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to each local exchange telephone company operating in Virginia, as set out in Appendix A attached hereto; each certificated interexchange carrier operating in Virginia as set out in Attachment B attached hereto; to the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Tabb, Virginia 23602; Dellon E. Coker, Chief, Regulatory Law Office, U. S. Army Legal Services, Agency, JALS-RL 5611 Columbia Pike, Falls Church, Virginia 22041-5013; Ronald B. Mallard, Director, Department of Consumer Affairs, County of Fairfax, 3959 Pender Drive, Fairfax, Virginia 22030; Mr. Gerald T. Kowasic, P.O. Box 642, Locust Grove, Virginia 22508; Mr. Charles R. Smith, Hello, Inc., 2315 West Broad Street, Richmond, Virginia 23220; Sue D. Blumenfeld, Esquire, and Mary P. Jaffe, Esquire, attorneys for Cable and Wireless Communications, Inc., 3 Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20036; Andrew D. Lipman, Esquire, and Russell M. Blau, Esquire, attorneys for DAVID Systems, Inc., 3000 K Street, N.W., 3rd Floor, Washington, D.C. 20007; Laura Burley, Cable and Wireless Communications, Inc., 1919 Gallows Road, Vienna, Virginia 22180; Nancy J. Rollin, Manager, Legal and Regulatory Department, MCI Telecommunications Corporation, 601 South 12th Street, Arlington, Virginia 22202; Warner F. Brundage, Jr., Esquire, C&P Telephone Company, 600 East Main Street, P.O. Box 27241, Richmond, Virginia 23261; Dallas H. Reid, Director, Regulatory/Industry Relations, Contel of Virginia, Inc., 1108 East Main Street, Suite 1108, Richmond, Virginia 23219; Elizabeth R. Johnson, Government and Industry Relations Manager, Central Telephone Company of Virginia, 2307 Hydraulic Road, P.O. Box 6788, Charlottesville, Virginia 22906; Warren C. Sanders, Director, Government Affairs, United Intermountain Telephone Company, 1001 East Broad Street, Richmond, Virginia 23219; N.L. Farmer, Director - Revenue and Earnings Management, GTE South, P.O. Box 1412, 4100 North Roxboro Road, Durham, North Carolina 27702; Wilma R. McCarey, Esquire, AT&T Communications, 3201 Jermantown Road, Room 3A2, Fairfax, Virginia 22030-2087; Helen Hall, Esquire, Regulatory Affairs Manager, U.S. Sprint Communications Company, 2002 Edmund Halley Drive, Reston, Virginia 22090; and Richard Gabel, Virginia Citizens Consumer Council, 3401 South Utah Street, Arlington, Virginia 22206; to the Commission's Office of General Counsel; and to the Commission's Divisions of Communications, Public Utility Accounting and Economics and Finance.

APPENDIX A

TELEPHONE COMPANIES IN VIRGINIA

Mr. Joseph E. Hicks, President

Amelia Telephone Corporation
P. O. Box 22995
Knoxville, Tennessee 37933-0995

Mr. Raymond L. Eckels, Manager
Amelia Telephone Corporation
P. O. Box 76
Amelia, Virginia 23002

Mr. M. Dale Tetterton, Jr., Manager
Buggs Island Telephone Cooperative
P. O. Box 129
Bracey, Virginia 23919

Ms. Sue B. Moss, President
Burke's Garden Telephone Exchange
P. O. Box 428
Burke's Garden, Virginia 24608

Mr. J. Thomas Brown
President - VA/NC
Central Telephone Company of Virginia
P. O. Box 6788
Charlottesville, Virginia 22906

Mr. Hugh R. Stallard, President
and Chief Executive Officer
Chesapeake & Potomac Telephone Company
600 East Main Street
P. O. Box 27241
Richmond, Virginia 23261

Mr. James R. Newell, Manager
Citizens Telephone Cooperative
Oxford Street
P. O. Box 137
Floyd, Virginia 24091

Mr. James S. Quarforth, President
Clifton Forge-Waynesboro Telephone Company
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Mr. Clarence Prestwood, President
Contel of Virginia, Inc.
9380 Walnut Grove Road
P. O. Box 900
Mechanicsville, Virginia 23111-0900

Mr. J. M. Swatts
State Manager - External Affairs
GTE South
P. O. Box 4338
Bluefield, West Virginia 24701

Mr. Thomas R. Parker
Associate General Counsel
Law Department
GTE South
P. O. Box 110 - Mail Code: 7
Tampa, Florida 33601-0110

Mr. Elmer E. Halterman, General Manager
Highland Telephone Cooperative
P. O. Box 340
Monterey, Virginia 24465

Mr. L. Ronald Smith
President/General Manager
Mountain Grove-Williamsville
Telephone Company
P. O. Box 105
Williamsville, Virginia 24487

Mr. Joseph E. Hicks
New Castle Telephone Company
P. O. Box 22995
Knoxville, Tennessee 37933-0995

Mr. K. L. Chapman, Jr., President
New Hope Telephone Company
P. O. Box 38
New Hope, Virginia 24469
North River Telephone Cooperative
P. O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Mr. Stanley G. Cumbee, General Manager
Pembroke Telephone Cooperative
P. O. Box 549
Pembroke, Virginia 24136-0549

Mr. E. B. Fitzgerald, Jr.
President & General Manager
Peoples Mutual Telephone Company, Inc.
P. O. Box 367
Gretna, Virginia 24557

Mr. Allen Layman, President
Roanoke & Botetourt Telephone Company
Daleville, Virginia 24083

Mr. James W. McConnell, Manager
Scott County Telephone Cooperative
P. O. Box 487
Gate City, Virginia 24251

Mr. Christopher E. French
President
Shenandoah Telephone Company
P. O. Box 459
Edinburg, Virginia 22824

Mr. William K. Smith, President
United Inter-Mountain Telephone Company
112 Sixth Street, P. O. Box 699
Bristol, Tennessee 37620

Mr. Dennis H. O'Hearn, Vice President
Virginia Hot Springs Telephone Company
P. O. Box 699
Hot Springs, Virginia 24445

Mr. Joseph E. Hicks
Vice President, External Affairs
Virginia Hot Springs Telephone Company
P. O. Box 22995
Knoxville, Tennessee 37933-0995

ATTACHMENT B

INTER-EXCHANGE CARRIERS

Mr. Terry Michael Banks, Vice President
AT&T Communications of Virginia
Three Flint Hill
3201 Jermantown Road, Room 3B
Fairfax, Virginia 22030-2885

Mr. James S. Quarforth, President
CF-W Network Inc.
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Mr. Gregory Wells
General Regulatory/Planning Manager
Central Telephone Company of Virginia
P. O. Box 6788
Charlottesville, Virginia 22903

Mr. James R. Newell, Manager
Citizens Telephone Cooperative
Oxford Street
P. O. Box 137
Floyd, Virginia 24091

Mr. Joseph Kahl, Manager
Regulatory Affairs
Communications Services of Virginia
One Harmon Plaza
Secaucuss, New Jersey 07096

Mr. Stephen Spencer
Contel of Virginia, Inc.
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Ms. Gail P. Charles, Director of Marketing
Institutional Communications Company - Virginia
2000 Corporate Ridge
McLean, Virginia 22102

Ms. Donna Sorgi, Director
of Regulatory & Governmental Affairs
MCI Telecommunications Corp. of Virginia
Five International Drive
Rye Brook, New York 10573-1095

Mr. Allen Layman, Executive Vice President
Roanoke & Botetourt Telephone Company
P. O. Box 174
Daleville, Virginia 24083

Mr. James W. McConnell, Manager
Scott County Telephone Cooperative
P. O. Box 487
Gate City, Virginia 24251

Mr. Christopher E. French
President & General Manager
Shenandoah Telephone Company
P. O. Box 459
Edinburg, Virginia 22824

Peter H. Reynolds, Director
SouthernNet of Va., Inc.
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

Mr. Charles A. Tievsky, Manager
Legal and Regulatory Affairs
TDX Systems, Inc.
1919 Gallows Road
Vienna, Virginia 22180

Ms. Helen Hall
Regulatory Affairs Manager
U.S. Sprint Communications Company
2002 Edmund Halley Drive
Reston, Virginia 22090

BUREAU OF INSURANCE

May 29, 1991

Administrative Letter 1991 - 9

TO: Rate Service Organizations And All Companies Licensed to Write Motor Vehicle Insurance In Virginia

RE: Private Passenger Automobile Medical Expense Coverage Effective July 1, 1991

House Bill 727 amends Virginia Code Sections 38.2-124 (medical payments) and 38.2-2201 (medical expense) by combining these two coverages into a single coverage to be called medical expense coverage. The intent of this revision is to reduce the confusion created by the existence of two such similar coverages. With the two separate coverages being combined, duplicate language in the Virginia Code has been eliminated. Section 38.2-124 now defines the coverage and refers to Section 38.2-2201 for specific coverage provisions, including the stacking of limits.

As previously required, a limit of $2,000 must be offered to all insureds. However, this does not preclude the offering of both higher and lower limits. It is important to note, particularly with regard to the Special Package Automobile Policy, that the $2,000 limit must be made available on all policies.

In addition, if policies are renewed at medical expense

limits lower than those offered during the preceding policy term, an adverse underwriting decision notice must be provided to the insured.

Appropriate revisions to manual rules and rates must be filed for policies effective on and after July 1, 1991.

/s/ Steven T. Foster
Commissioner of Insurance

SUPPLEMENT OF ADMINISTRATIVE LETTER 1991-9

RE: PRIVATE PASSENGER AUTOMOBILE MEDICAL EXPENSE COVERAGE

- SUMMARY OF CHANGES -

A597b (7-1-91) - AUTOMOBILE DEATH INDEMNITY AND TOTAL DISABILITY COVERAGES

One substantive amendment was made to this form. Condition 1, Policy Provisions was corrected to refer to Medical Expense and Income Loss Benefits coverage versus Medical Payments coverage.

A602c (7-1-91) - EXTENDED NON-OWNED AUTOMOBILE COVERAGE

Eliminated the "Notes" section of the endorsement. The notes referred to a non-existent form A594b. References to Division (1) and Division (2) were deleted. The definition of "injured person" from the Medical Expense and Income Loss Benefits coverage was modified for the purposes of this coverage as previously modified for the Medical Payments coverage. The deleted exclusion (e) is intended to remove the restriction of vehicles furnished for the regular use of the named individual.

A606e (7-1-91) - SUSPENSION OF INSURANCE

Deleted the references to Medical Payments in the "schedule" and replaced it with the separate references of Medical Expense Benefits and Income Loss Benefits.

A799f (7-1-91) - VIRGINIA AMENDATORY ENDORSEMENT

The schedule for Medical Expense and Income Loss Benefits coverage was deleted and all references to a schedule deleted throughout the text.

Amended typographical error in "Persons Insured" ("Person Insured") on page 1.

Amended the definitions of "farm automobile" and "utility automobile" to eliminate the 1500 lb weight limitations (House Bill 1525).

Replaced old Part II and the provisions of the A799e regarding Medical Payments coverage. Reworded the lead-in language to clarify the activation of coverage.

Modified the lead-in language on page 4 to clarify the Definitions section. Also, an editorial change to the definition of "insured motor vehicle" (changed "endorsement" to "coverage").

Amended (editorially) the definition of "named insured" on page 5 (deleted "declaration of the policy" and replaced it with "declarations" and eliminated further reference to a schedule).

Amended the "stacking" language to accommodate the Medical Expense and Income Loss Benefits coverage (page 6). The old Medical Payments "stacking" language was used. The same modifications were used for Income Loss Benefits coverage.

All upper case "C"s in company, companies, etc. have been changed to lower case for consistency.

The Assistance and Cooperation Condition incorrectly referred to Parts I and III of the policy. It should have referred to Parts I and II.

A977i (7-1-91) - AUTOMOBILE SPECIAL PACKAGE MEDICAL EXPENSE AND INCOME LOSS BENEFITS

Title has been changed to indicate that this form now applies to SPAP only.

First paragraph added and bracketed - this will allow company to either make endorsement a part of the policy, or continue to attach as separate endorsement.

Schedule bracketed - see item 2 above. Also deleted phrase "... in the Declarations or..."

The lead in sentence of "Definitions", page 2 has been amended for clarity.

Part of the definition of "named insured" has been bracketed - see item 2. above. In addition "declaration of the policy" has been changed to "declarations" for consistency.

"Limits of Liability" beginning on page 3 has been revised to reflect the fact that other limits than $2,000. may apply.

Parts of 3(a) and (b) have been bracketed on page 4 - refer to item 2 above.

In the lead in sentence of "Definitions", page 5, the semi-colon has been replaced with a colon.

Typographical error in definition of "income loss - page 5 - has been corrected. "Insured person" has been changed to "injured person".

Language under Limits of Liability - page 5 - has been amended for clarity and consistency.

Lead in sentence of "Conditions" page 6 has been amended for clarity.

"Note" on page 7 has been changed - refer to item 2 above.

"Instruction" on page 7 has been amended to indicate that endorsement will only be used with SPAP.

All upper case "C's" in Company, Companies, etc. have been changed to lower case for consistency.

E139a (7-1-91) - NAMED NON-OWNER COVERAGE

Eliminated the schedule and references to same in the text of the endorsement.

Eliminated references to "Expenses for Medical Services" and eliminated the modifications to the "Persons Insured" definition. Language was added to the form to refer to Medical Expense and Income Loss Benefits.

Amended the definition of "injured person" to accommodate the language differences in the old Medical Payments and the new Medical Expense and Income Loss Benefits coverage.

E140a (7-1-91) - MISCELLANEOUS TYPE VEHICLE ENDORSEMENT Deleted the schedule and all references to same throughout the text.

Eliminated references to Medical Payments coverage and replaced them with references to Medical Expense and Income Loss Benefits.

E141a (7-1-91) - SNOWMOBILE ENDORSEMENT

Deleted the schedule and references to same throughout the endorsement.

Deleted much of the unnecessary "bracketing".

Deleted all references to passenger hazard exclusions.

Deleted any references to Medical Payments and Expenses for Medical Services. Also, deleted references to Division 1 and/or 2. Coverage is perhaps broadened by these changes.

Amended the Part II definition of "motor vehicle" to accommodate snowmobiles.

SP2g (7-1-91) - AMENDMENT OF SPECIAL PACKAGE AUTOMOBILE POLICY

Definition of "utility automobile" amended to reflect change made to § 38.2-2212, as a result of House Bill 1525.

All reference to "Medical Expense Coverage" (which is actually Medical Payments Coverage in the SPAP) has been eliminated.

SP-6b (7-1-91) - SPECIAL PACKAGE EXTENDED NON-OWNED AUTOMOBILE COVERAGE

Deleted reference to Medical Expense (actually medical payments), in the policy, in the first paragraph.

Created second paragraph specifically for the Medical Expense and Income Loss Benefits Endorsement. Used the same definition as "Person Insured" in first paragraph, but used term "Injured Person" to correspond to A977i defined term.

Amended exclusion (e) of A977i in order to provide coverage for bodily injury sustained by the named insured or any relative while occupying any motor vehicle furnished or available for the regular use of the named insured or relative and which is not an insured motor vehicle.

Amended lead in language for revised definition of "non-owned automobile" to indicate that it applies to both Part I Liability and to Section I of the Medical Expense and Income Loss Benefits Endorsement.

NAUA 209d (7-1-91) - SUSPENSION OF INSURANCE

Deleted the references to Medical Payments in the "schedule" and replaced it with the separate references of Medical Expense Benefits and Income Loss Benefits.

* * *

AT RICHMOND, MAY 29, 1991
ADMINISTRATIVE ORDER NO. 10159

AUTOMOBILE INSURANCE

ESTABLISHMENT BY THE STATE CORPORATION COMMISSION OF STANDARD FORMS OF POLICIES, RIDERS, ENDORSEMENTS, AND OTHER SPECIAL OR SUPPLEMENTAL AGREEMENTS AND PROVISIONS FOR USE BY ALL INSURANCE COMPANIES IN INSURING (1) AGAINST LOSS OR DAMAGE RESULTING FROM ACCIDENT TO, OR INJURY SUFFERED BY, ANY PERSON, AND FOR WHICH THE PERSON INSURED IS LIABLE, (2) AGAINST LOSS BY LIABILITY FOR DAMAGE TO PROPERTY RESULTING FROM THE OWNERSHIP, MAINTENANCE OR USE OF ANY MOTOR VEHICLE, AND (3) AGAINST LOSS OF OR DAMAGE TO ANY MOTOR VEHICLE OWNED BY THE INSURED, PURSUANT TO THE PROVISIONS OF SECTIONS 38.2-2218 TO 38.2-2223, INCLUSIVE, OF THE CODE OF VIRGINIA.

WHEREAS, Pursuant to the provisions of Sections 38.2-2218 to 38.2-2223, inclusive, of the Code of Virginia, the State Corporation Commission, by other Administrative Orders, has established certain forms of policies, riders, endorsements, and other special or supplemental agreements and provisions for use by all insurance

companies in insuring (1) against loss or damage resulting from accident to, or injury suffered by, any person, and for which the person insured is liable, (2) against loss by liability for damage to property resulting from the ownership, maintenance or use of any motor vehicle, and (3) against loss of or damage to any motor vehicle owned by the insured;

AND IT APPEARING to the State Corporation Commission that the use of certain other forms, policies, riders, endorsements, and other special or supplemental agreements and provisions for use in writing the types of insurance herein referred to is so extensive that standard forms thereof should be established;

IT IS, THEREFORE, ORDERED, That the following forms of endorsements for use in connection with the standard forms of policies be, and they hereby are, filed by the State Corporation Commission in its office at Richmond, Virginia:

A597b(7-1-91) - AUTOMOBILE DEATH INDEMNITY AND TOTAL DISABILITY COVERAGES - AUTOMOBILE DEATH AND SPECIFIC DISABILITY BENEFITS [on file w/ROR]

A602c(7-1-91) - EXTENDED NON-OWNED AUTOMOBILE COVERAGE (NAMED INSURED OR RELATIVE) [on file w/ROR]

A606e(7-1-91) - SUSPENSION OF INSURANCE [on file w/ROR]

A799f(7-1-91) - FAMILY - VIRGINIA AMENDATORY ENDORSEMENT [on file w/ROR]

A977i(7-1-91) - AUTOMOBILE SPECIAL PACKAGE MEDICAL EXPENSE AND INCOME LOSS BENEFITS ENDORSEMENT (VIRGINIA) [on file w/ROR]

E139a(7-1-91) - NAMED NON-OWNER COVERAGE [on file w/ROR]

E140a(7-1-91) - MISCELLANEOUS TYPE VEHICLE ENDORSEMENT [on file w/ROR]

E141a(7-1-91) - SNOWMOBILE ENDORSEMENT [on file w/ROR]

SP2g(7-1-91) - AMENDMENT OF SPECIAL PACKAGE AUTOMOBILE POLICY - VIRGINIA [on file w/ROR]

SP-6b(7-1-91) - SPECIAL PACKAGE - EXTENDED NON-OWNED AUTOMOBILE COVERAGE (NAMED INSURED OR RELATIVE) VIRGINIA [on file w/ROR]

NAUA 209d(7-1-91) - SUSPENSION OF INSURANCE [on file w/ROR]

IT IS FURTHER ORDERED, That, except as hereinafter provided, on and after July 1, 1991, the proposed new forms of riders, endorsements, and other special or supplemental agreements and provisions hereinbefore referred to shall become the standard forms thereof for use by all insurance companies applicable to new and renewal policies effective on and after July 1, 1991, and thereafter no insurance company shall use any form covering substantially the same agreement provided for by such form, unless it is in the precise language of the standard form.

IT IS FURTHER ORDERED, That if objection to the provision of any proposed new standard form is filed in writing by any insurance company within twenty days from the day upon which this Order is entered, such form shall not become standard as provided herein and proceedings in reference thereto shall be instituted but such objection shall not serve to prevent those proposed standard forms to which no objection has been filed from becoming standard forms on and after July 1, 1991 respectively, in accordance with the provisions hereof.

IT IS FURTHER ORDERED, That the Bureau of Insurance shall immediately notify all parties to whom attested copies of this Order are directed to be sent on receipt of an objection, in writing, from any insurance company to the provisions of any proposed form.

IT IS FURTHER ORDERED, That for the word "company" appearing in standard form, there may be substituted a more accurate descriptive term for the type of insurer.

IT IS FURTHER ORDERED, That there being, in the opinion of the State Corporation Commission, no further necessity for the continuance of the following forms of endorsements, they are withdrawn on and after July 1, 1991:

A597a(9-62) - AUTOMOBILE DEATH INDEMNITY AND TOTAL DISABILITY COVERAGES - AUTOMOBILE DEATH AND SPECIFIC DISABILITY BENEFITS [on file w/ROR]

A602b(1-63) - EXTENDED NON-OWNED AUTOMOBILE COVERAGE (NAMED INSURED OR RELATIVE) [on file w/ROR]

A606d(8-67) - SUSPENSION OF INSURANCE [on file w/ROR]

A799e(7-89) - FAMILY - VIRGINIA AMENDATORY ENDORSEMENT [on file w/ROR]

A977h(1-90) - MEDICAL EXPENSE AND INCOME LOSS BENEFITS ENDORSEMENT [on file w/ROR]

E139(6-80) - NAMED NON-OWNER COVERAGE [on file w/ROR]

E140(6-80) - MISCELLANEOUS TYPE VEHICLE ENDORSEMENT [on file w/ROR]

E141(6-80) - SNOWMOBILE ENDORSEMENT [on file w/ROR]

SP2f(7-89) - AMENDMENT OF SPECIAL - PACKAGE AUTOMOBILE POLICY - VIRGINIA [on file w/ROR]

SP-6a(1-63) - SPECIAL PACKAGE - EXTENDED NON-OWNED AUTOMOBILE COVERAGE (NAMED INSURED OR RELATIVE) VIRGINIA [on file w/ROR]

NAUA209c(10-66) - SUSPENSION OF INSURANCE [on file w/ROR]

IT IS FURTHER ORDERED, That attested copies of this Order be sent to all licensed rate service organizations, the Bureau of Insurance, and all companies which are affected thereby.

* * * * * * * * *

June 17, 1991

ADMINISTRATIVE LETTER 1991-11

TO: All Insurance Companies, Health Services Plans Health Maintenance Organizations, and Other Interested Parties

RE: Legislation enacted by the 1991 Session of the General Assembly of Virginia

Attached are summaries of certain statutes enacted or amended and re-enacted by the General Assembly of Virginia during the 1991 Session.

The effective date of these statutes is July 1, 1991 except as otherwise indicated in the attachment.

Each organization to which this letter is being sent should review the attachment carefully and see that notice of these laws is directed to the proper persons (including its appointed representatives) to ensure that appropriate action is taken to effect compliance with these new legal requirements. Please note that this document is a summary of legislation and is neither a legal review and interpretation nor a full description of legislative amendments made to insurance-related laws during the 1991 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

/s/ Steven T. Foster
Commissioner of Insurance

(All Bills Effective July 1, 1991 Unless Otherwise Noted)

Life and Health Insurance

House Bill 883

Health Insurance for Adopted Children

This bill amends § 38.2-4319 and adds § 38.2-3411.2 to require that accident and sickness insurance provided to family members under a policy, subscription contract or health care plan be provided, without limitations, to adopted children of an insured, subscriber or plan enrollee from the date a child is placed with such individual for the purpose of adoption. A child placed within 31 days of birth is to be considered a newborn child of the insured, subscriber or plan enrollee as of the date of adoptive or parental placement. The insured has 31 days to notify the company of the adoption of the child if a fee or premium is required for coverage of the child.

House Bill 1384

Investigative Powers of the State Corporation Commission

This bill amends § 38.2-515 to require insurers to file timely responses to requests from the State Corporation Commission for trade practice information. An insurer failing to do so will be subject to the enforcement procedures and penalties available to the Commission under Chapter 2 of Title 38.2.

House Bill 1385 (Senate Bill 847) (Effective April 3, 1991)

Life and Health Insurance for Members of the Armed Forces

These bills add § 38.2-508.1 to prohibit insurers from refusing to issue or refusing to continue life insurance coverage for members of the United States Armed Forces, Reserves or National Guard solely due to their military status or their military duty assignments. This bill also provides that in the event that an individual's or family member's coverage under a group life or group health insurance contract is terminated due to an individual's military status, coverage will be reinstated without additional preexisting condition limitations or other exclusions or limitations upon the individual's return to eligibility status under the policy. The reinstatement provision applies regardless of continuation, renewal, reissue or replacement of the group insurance policy.

House Bill 1798

Medicare Supplement Policies

This bill amends § 38.2-3603 to increase the loss ratio requirement for individual Medicare Supplement insurance policies from sixty percent to sixty-five percent.

House Bill 1877

Interest on Life Insurance Proceeds

This bill amends § 38.2-3115 to exempt certain credit life insurance from this section which establishes the amount of interest to be paid on life insurance proceeds. The exemption is for credit life insurance for which the premium is paid wholly from creditor funds with no

identifiable charge to the insured and upon which post-death interest on the indebtedness is waived by the creditor in an amount at least equal to the amount of interest that would otherwise be payable.

House Bill 1896

Notice of Lapse in Life and Health Insurance

This bill amends §§ 38.2-4214 and 38.2-4319 and adds § 38.2-232 to require insurers, health services plans and health maintenance organizations that issue policies, contracts or plans of life, credit life, industrial life, variable life, annuity, variable annuity, credit accident and sickness or accident and sickness insurance, to notify the owner of the policy, contract or plan in writing prior to a lapse resulting from the failure of the owner to pay premiums that are due. This bill does not apply to group coverage or where the provider as a general practice provides owners with written notice of premiums due. This bill also does not apply to policies, contracts or plans where the owner has been furnished a written notice separate from the policy that the failure to pay premiums in a timely manner will result in a lapse of coverage.

House Bill 1906

Burial Life Insurance

This bill amends § 54.1-2820 to require that those engaged in the business of offering preneed funeral contracts that use life insurance or annuity contracts as the funding vehicle must utilize life insurance or annuity contracts that adjust the full value annually by a factor equal to the Consumer Price Index, or that the death benefit under the contract be equal to or exceed the sum of all premiums paid for the contract plus annual interest of at least five percent (compounded annually).

Property and Casualty Insurance

House Bill 727

Medical Payments and Medical Expenses Provisions of Motor Vehicle Insurance

This bill combines Medical Payments coverage (§ 38.2-124) and Medical Expense coverage (§ 38.2-2201) into one coverage called Medical Expense and Loss of Income Benefits. The amended § 38.2-124 now defines medical expense coverage in general terms and the amended § 38.2-2201 contains the specific coverage provisions and the requirement of a mandatory offer of coverage of $2000 (other limits may be agreed upon). The stacking provision requiring the insurer to pay the maximum limit available for up to four vehicles was not amended and still applies. The Medical Expense notice provision required by § 38.2-2202 was not amended to reflect these changes and will probably have to be amended by the 1992 Session of the Virginia General Assembly.

House Bill 1525

Motor Vehicles Not Used in Occupations, Professions or Business

This bill amends § 38.2-2212 to eliminate the maximum load capacity restriction in the definition of an insured motor vehicle under § 38.2-2212. This bill also deletes the provision in § 38.2-2212 that a policy of motor vehicle insurance as defined in that section does not include any policy insuring more than four motor vehicles.

House Bill 1630 (Effective April 3, 1991)

Suspension of Certain Motor Vehicle Insurance Coverages

This bill adds § 38.2-2205.1 to require insurers to suspend any coverage on a motor vehicle if the named insured so requests due to the vehicle being impounded on a military base (satisfactory evidence of actual impoundment may be required). The insurer may decline to suspend coverage if the impoundment is for a period of less than thirty days. This bill contained an emergency clause and was effective April 3, 1991.

House Bill 1671 (Effective March 20, 1991)

Fire Insurance Policies

This bill adds § 38.2-2114.1 to allow the Commission to exempt insurers from the termination provisions of subsections B and C of § 38.2-2114 and the mailing requirements of § 38.2-2113 when the insurer proposes to place all of its policies with an affiliate insurer under common control. An insurer must demonstrate that (i) the replacement policy is underwritten by an affiliate insurer under common control with the petitioning insurer; (ii) the replacement policy is substantially similar to the existing policy; (iii) the premium for the replacement policy is no greater than that of the existing policy; and (iv) the replacement insurer is licensed to do business in the Commonwealth. The replacement insurer must keep a copy of the replacement offer for one year on policies not replaced. The bill contained an emergency clause and was effective March 20, 1991.

House Bill 1672 (Effective March 13, 1991)

Motor Vehicle Insurance Policies

This bill adds § 38.2-2212.1 to allow the Commission to exempt insurers from the termination provisions of subsection E of § 38.2-2112 and the mailing requirements of § 38.2-2208 when the insurer proposes to place all of its policies with an affiliate insurer under common control. The insurer must demonstrate that (i) the replacement policy is underwritten by an affiliate insurer under common control with the petitioning insurer; (ii) the replacement policy is substantially similar to the existing policy; (iii) the premium for the replacement policy is no greater than that of the existing policy; and (iv) the

replacement insurer is licensed to do business in the Commonwealth. The replacement insurer must keep a copy of the replacement offer for one year on policies not replaced. The bill contained an emergency clause and was effective March 13, 1991.

Senate Bill 762

Bad Faith Denial of Motor Vehicle Claims

This bill amends § 8.01-66.1 of the Civil Remedies Code by stipulating that if an insurer in bad faith denies or fails to pay to its insured a claim of more that $1000 in excess of the deductible under a motor vehicle insurance policy, the insurer will be liable to the insured in the amount otherwise due and payable, plus double the interest rate specified by statute. The insurer will also have to pay reasonable attorney's fees and expenses. The Civil Remedies Code already provides for a penalty for the bad faith settlement of claims of $1000 or less for insureds and third party claimants.

Senate Bill 787

Disclosure of an Agent's Moratorium

This bill adds § 38.2-613.1 to require agents to disclose the fact that they are not submitting an application for private passenger motor vehicle insurance to an insurer (and instead are proposing to submit an application to the assigned risk plan or are proposing to place the policy with another insurer) solely because the insurer has placed a moratorium against writing new business on the agent. This provision is conditioned upon (i) the applicant otherwise being acceptable to the insurer and (ii) the moratorium resulting in the applicant being charged a higher rate. The existence of the moratorium must be disclosed prior to placement with another insurer or submission to the assigned risk plan.

Senate Bill 870

HEAT Program

This bill adds § 38.2-414 to establish a statewide program to receive and to pay rewards for information leading to the arrest and conviction of persons who commit motor vehicle theft-related crimes in Virginia. The program is to be financed through annual assessments collected from insurers licensed to write motor vehicle insurance coverage in Virginia. The assessments will be equal to one-quarter of one percent of the insurer's total direct gross premium income for automobile physical damage insurance other than collision written in Virginia during the preceding calendar year. The assessments, which are due by March 1 of each year, will be collected by the Commission and placed in a fund known as the HEAT (Help Eliminate Automobile Theft) Fund, which will be administered by the Superintendent of the Department of State Police.

Senate Bill 887

Birth-Related Neurological Injury Compensation Act

This bill amends § 38.2-5020 to waive the annual participating physician assessment for residents in a duly accredited family practice or obstetrics residency training program at a participating hospital. Such residents are to considered participating physicians in the Virginia Birth-Related Neurological Injury Compensation Program, but are not required to pay an assessment.

FINANCIAL REGULATION

House Bill 1439

Insurer Investments

This bill adds § 38.2-1411.1 to clarify that securities described in 15 U.S.C. § 77r-1 are subject in the Commonwealth to the limitations prescribed for insurer investments not guaranteed by the full faith and credit of the United States. This new provision distinguishes between securities described in 15 U.S.C. 77r-1 and the unrestricted § 38.2-1415 investments for which the full faith and credit of the United States is pledged. However, § 38.2-1411.1 enables the State Corporation Commission to permit an insurer to increase its investment in § 77r-1 securities to a maximum of 10 percent of its total admitted assets until July 1, 1992.

House Bill 1448

Conversion of Health Service Plans to Mutual Insurance Companies

This bill adds § 38.2-4229.1 to authorize domestic nonstock corporations to convert to domestic mutual insurers. The nonstock corporation must comply with the surplus requirements for domestic mutual insurers in § 38.2-1030 and the articles of incorporation provisions of § 38.2-1002. The nonstock corporation must comply with § 38.2-316 by filing copies of all policies that the nonstock corporation plans to issue after the conversion at least ninety days prior to the effective date of conversion. All subscription contracts issued and outstanding as of the date of conversion shall remain in force in accordance with their terms until expiration or termination. Any nonstock corporation offering an open enrollment program under § 38.2-4216.1 must continue its open enrollment program after conversion. Any company wanting to discontinue an open enrollment program must give 24 months notice of such action as required by § 38.2-4216.1. The license tax on direct gross premium income for accident and sickness insurance will be three-quarters of one percent as long as the corporation continues to offer open enrollment.

This bill also amends § 38.2-3538 to allow the inclusion of a provision that benefits for health care services may be paid to the provider of those services in group accident

and sickness insurance policies.

House Bill 1979

Guaranty Associations

This bill amends §§ 38.2-1611.1 and 38.2-1709 to clarify the law pertaining to tax write-offs of certificates of contribution for the Virginia Property and Casualty Insurance Guaranty Association and the Virginia Life, Accident and Sickness Insurance Guaranty Association. The amendment specifies that the amount amortized is an amount not to exceed 0.05 of 1 percent of an association member's direct gross premium income for the classes of insurance assessed in the account for which the insurer member is assessed.

Senate Bill 554

Virginia Life, Accident and Sickness Guaranty Association

This bill amends §§ 38.2-1700 and 38.2-1704 to limit the protection of the Virginia Life, Accident and Sickness Insurance Guaranty Association (Guaranty Association) to Virginia residents only except in certain narrowly defined circumstances in which similar coverage is not available in another state. This substantially limits the potential liabilities of the Guaranty Association and will bring Virginia law into conformity with the NAIC Model Act and with the approach taken by the majority of other states.

Senate Bill 581

Annual Statements and Reports of Insurers

This bill amends §§ 38.2-1300 and 38.2-1301 to require insurers to file copies of their statutory financial statements with the NAIC (by March 1) in the same format as required by the State Corporation Commission unless a specific insurer is exempted from this requirement by the Commission. The requirement applies to any amendments and addenda to the annual statement filing as well as any additional filings prescribed by the Commission for the preceding year. The Commission will also be able to require the submission of quarterly statements to the NAIC. These submissions will help coordinate the database of the Commission with that of the NAIC and will enhance the NAIC's ability to track the financial condition of the industry.

This bill also adds § 38.2-1310.1 to address assets which shall be not admitted for purposes of determining an insurer's financial condition. Goodwill, trade names and other intangible assets, certain advances and certain equity interests, and assets of doubtful value or character are described as assets not admitted.

Senate Bill 595

Capital and Surplus Requirements

This bill amends §§ 38.2-1028-1031, 38.2-1037, 38.2-1206 and 38.2-1207 and 38.2-1213 to prescribe new minimum surplus requirements by July 1, 1994. The minimum requirement is $3 million for stock insurers and $1.6 million for assessable mutual insurers. Mutual insurers issuing policies without contingent liability need at least $4 million of surplus. The requirements for reciprocals are similar to the surplus requirements for mutual insurers. Alien insurers are required to have at least $4 million in trusteed surplus.

The bill also amends § 38.2-1038 to permit the State Corporation Commission to issue an order concerning an insurer's hazardous financial condition after reviewing the insurer's financial statements and finding that there is a reasonable expectation that the insurer will not be able to meet its obligations to all policyholders. An on-site financial examination finding of a current hazardous financial condition is no longer required before the Commission's order can be issued.

This bill amends § 38.2-1045 to increase the maximum current market value of securities to be deposited by insurers with the State Treasurer from $200,000 to $500,000. The amendment also provides that no surety bond may be deposited with the Treasurer, in lieu of securities, after June 30, 1991 and that any surety bonds so deposited before July 1, 1991 must be replaced by the next renewal, anniversary, or expiration date of such bond, or not later than June 30, 1992, whichever first occurs.

Senate Bill 670

Reinsurance

This bill adds a new Article 3.1 in Chapter 13 of Title 38.2. The article is based on the NAIC Model Law on Credit for Reinsurance and includes guidelines for determining when credit will be allowed for reinsurance. It also contains provisions required in reinsurance agreements and relating to letters of credit and trust documents used in a reinsurance transaction. A formal filing and review process provides the steps by which an insurer can be assured credit for reinsurance ceded to licensed, accredited or financially sound assuming insurers. The Commission is also permitted to disallow credits found to have been arranged principally for the purpose of deception or financial statement distortion. The article contains provisions for bringing existing agreements into compliance with the new credit and form requirements between January 1, 1992 and 1993.

MISCELLANEOUS

House Bill 335

Virginia Insurance Laws Pertaining to Lending Institutions Selling Insurance

During the 1991 Session of the General Assembly, Title

38.2 of the Code of Virginia was amended to permit lending institutions to sell all types of insurance. Shown below are the laws that were repealed and amended as well as the disclosure requirements and prohibitions applicable to lending institutions that sell insurance. Lending institutions, their officers and employees are subject to all other laws and regulations affecting insurance agents and agencies in general.

Repealed Laws under House Bill 335

1. Section 38.2-204 (Insurance companies not to engage in banking)

2. Section 38.2-205 (Prohibited insurance activities of lending institutions and bank holding companies)

3. Section 38.2-1811 (Licensing of lending institutions and bank holding companies for certain classes of insurance)

Amended Laws under House Bill 335

1. Section 38.2-513 (Favored agent or insurer; coercion of debtors)

2. Section 38.2-514 (Failure to make disclosure)

3. Section 38.2-1824 (Kinds of agents' licenses and appointments issued)

Disclosure Requirements under House Bill 335

A lending institution, bank holding company, savings institution holding company, or subsidiary or affiliate licensed to sell insurance must disclose the following to an individual who purchases insurance:

1. The cost of insurance;

2. That the individual may obtain insurance through other sources and that the availability of an account or loan relationship and the interest rates paid or charged for a loan or an extension of credit may not be made contingent upon the purchase of insurance; 3. The individual's right to use a 10-day cancellation period to obtain price quotations for insurance from other sources;

4. The actions and forms necessary for the individual to cancel the policy;

5. The individual's right to receive a refund or credit of the unearned pro rata portion of the premium upon cancellation;

6. For life insurance, the "interest adjusted net cost index".

The requirements of § 38.2-513, as amended by HB335, are fully applicable to Life and Health insurance sales as well as Property and Casualty insurance sales,

EXCEPT:

1. Because the insurance laws already contain a minimum of a 10-day free look provision for Life and Health policies with a complete right of rescission and complete premium refund by the insurer during the 10-day period, the requirements of § 38.2-513.E. (subsections 3, 4, and 5) are not applicable to Life and Health insurance.

With regard to Life and Health Insurance, though, there is 1 additional requirement, which appears in § 38.2-514. It requires the agent to provide, prior to the sale of any policy of life insurance, a WRITTEN disclosure to the purchaser of the policy's "interest adjusted net cost index," in compliance with regulations or forms approved by the Commission.

Since the Commission has not adopted a regulation dealing with this, and since the law requires simply that the index be furnished in writing, the Bureau will accept the disclosure in any form that is in compliance with the requirements of any state that has adopted the NAIC Life Insurance Disclosure Model Regulation. For our purposes, the "interest adjusted net cost index" is the same as the "Surrender Cost Comparison Index" described in the Model, either on a Guaranteed Basis, or on both an Illustrated and a Guaranteed Basis if the policy has variable values. The calculations of the indices must be done by the insurer; agents do not have the information necessary to perform the calculations. Most insurers are already providing these indices for policies issued in other states, and there should be little trouble obtaining them for policies being solicited in Virginia.

Prohibitions under House Bill 335

1. Require a borrower to purchase insurance through a particular insurer, agent, or broker;

2. Unreasonably disapprove an insurance policy;

3. Require payment of a separate charge for handling an insurance policy or for substituting one policy for another;

4. Use or disclose information when such information is to the advantage of the mortgagee, vendor, lender, or subsidiary or to the detriment of the borrower, mortgagor, purchaser, insurer, agent, or broker except as required by law;

5. Solicit insurance from a person interested in securing a mortgage before giving a commitment in writing as to the loan or extension of credit;

6. Obtain or use, for any purpose related to the sale of insurance, any information contained in an insurance contract covering a customer if the contract was sold to

the customer by a broker or agent not affiliated with the institution, subsidiary, or affiliate and the contract or information was obtained from the customer in connection with a request for an extension of credit;

7. Solicit or effect the sale of an annuity, life insurance policy, or an accident and sickness insurance policy without furnishing the disclosure information required by regulation;

8. Act as an agent without first obtaining a license in a manner and in a form prescribed by the Commission;

9. Solicit, negotiate, procure, or effect contracts of insurance on behalf of an insurer not licensed in Virginia unless licensed as a surplus lines broker.

House Bill 899

Premiums on Insurance

This bill amends § 38.2-1904 to permit insurers subject to Chapter 19 to file expense reduction plans that permit agents to reduce their commissions in order to reduce the premium being charged to the insured. The new language does not require agents to reduce their commissions nor does it allow an insurer to unreasonably refuse to reduce the premium as a result of the commission reduction.

House Bill 1445

Records of Licensed Agents and Insurance Consultants

This bill amends § 38.2-1809 to provide that licensed agents and insurance consultants are not required to retain records of premium quotations which are not accepted by an insured or a prospective insured.

House Bill 1455

Nonresident Insurance Agent's Licenses

This bill amends § 38.2-1822 to allow certification by the insurance department of a nonresident's state of domicile to serve as proper proof of corporate authority and existence for the licensing of a nonresident insurance agency in Virginia. Such certification will serve to satisfy the requirements set forth in subsection A of § 38.2-1836 and subsection C of § 38.2-1822.

DIRECTOR'S ORDER NUMBER TWELVE (91)

CERTAIN DIRECTOR'S ORDERS RESCINDED

In accordance with the authority granted by § 58.1-4006A of the Code of Virginia, I hereby rescind the following Director's Orders:

Order Number	Date Issued	Subject
19(89)	10/11/89	Virginia's Eighth Instant Game; ''One For The Money,'' Final Rules for Game Operation.
23(89)	12/11/89	Virginia's Ninth Instant Game Lottery; ''7-11-21,'' Final Rules for Game Operation.
02(90)	01/16/90	Instant Game Weekly Draws and Virginia's Monthly Million Dollar Drawings; Revised Rules.
08(90)	02/14/90	Virginia's Tenth Instant Game Lottery; ''Play TV,'' Final Rules for Game Operation.
11(90)	03/20/90	Virginia's Ninth Instant Game Lottery; ''7-11-21,'' End of Game.
12(90)	03/30/90	Virginia's Eleventh Instant Game Lottery; ''Double Feature,'' Final Rules for Game Operation.
15(90)	06/04/90	Virginia's Twelfth Instant Game Lottery; ''Three Times Lucky,'' Final Rules for Game Operation.
16(90)	06/11/90	Virginia's Eighth Instant Game Lottery; ''One For The Money,'' End of Game.
17(90)	06/12/90	Exemption of Small Purchases from Competitive Procurement Procedures.
20(90)	07/23/90	Virginia's Tenth Instant Game Lottery; ''Play TV,'' End of Game.
28(90)	09/28/90	Virginia's Eleventh Instant Game Lottery; ''Double Feature,'' End of Game.
29(90)	10/18/90	Virginia's Twelfth Instant Game Lottery; ''Three Times Lucky,'' End of Game.

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: May 7, 1991

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DIRECTOR'S ORDER NUMBER THIRTEEN (91)

"SEE RED"; VIRGINIA LOTTERY RETAILER SALES PROMOTIONAL PROGRAM AND RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "See Red" Virginia Lottery Retailer Sales Promotional Program and Rules for the lottery retailer incentive program which will be conducted from Wednesday, May 22, 1991 through Wednesday, July 17, 1991. These rules amplify and conform to the duly adopted State Lottery Board regulations.

These rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: May 21, 1991

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DIRECTOR'S ORDER NUMBER FOURTEEN (91)

"JOKER'S WILD"; PROMOTIONAL GAME AND DRAWING RULES

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Joker's Wild" promotional game and drawing rules for the kickoff events which will be conducted at various lottery retailer locations throughout the Commonwealth on Tuesday, July 9, 1991. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until July 10, 1991, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
Director
Date: June 5, 1991

MARINE RESOURCES COMMISSION

FINAL REGULATIONS

NOTICE: Effective July 1, 1984, the Marine Resources Commission was exempted from the Administrative Process Act for the purpose of promulgating regulations. However, the Commission is required to publish the full text of final regulations.

Title of Regulation: **VR 450-01-0070. Pertaining to Spanish and King Mackerel.**

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

Effective Date: June 8, 1991.

Preamble:

This regulation establishes daily bag limits, minimum size limits, and catch quotas on the harvest of Spanish mackerel and king mackerel. These regulations are established to prevent overfishing and to assist the further recovery of Spanish and king mackerel along the Atlantic Coast.

VR 450-01-0070. Pertaining to Spanish and King Mackerel.

§ 1. Authority, prior regulation, effective date.

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

B. No prior regulations pertain to Spanish mackerel or king mackerel.

C. The effective date of this regulation is June 8, 1991.

§ 2. Purpose.

The purpose of this regulation is to prevent overfishing of the Spanish mackerel and king mackerel stocks found in Virginia waters and along the Atlantic Coast. This regulation responds to the goals and objectives of the Atlantic States Marine Fisheries Commission's and the South Atlantic Fishery Management Council's Spanish and king mackerel fishery management plans.

§ 3. Daily bag limits established.

A. The daily bag limits for hook-and-line fishermen taking Spanish mackerel or king mackerel are established at 10 Spanish mackerel per day and 5 king mackerel per day. When fishing from a vessel, the daily limits shall be equal to the number of persons on board the vessel multiplied by 10 for Spanish mackerel or multiplied by 5 for king mackerel. Possession of the legal number of Spanish or king mackerel is the responsibility of the vessel captain or operator.

B. It shall be unlawful for any person to take by hook-and-line, hand-line, or rod-and-reel and possess more than 10 Spanish mackerel per day or more than 5 king mackerel per day.

C. The daily bag limit provisions established in this section shall not apply to persons harvesting Spanish mackerel or king mackerel with licensed commercial gear.

§ 4. Minimum size limits established.

A. Minimum size limits for Spanish mackerel and king mackerel are established at 14 inches total length.

B. Except as provided in subsection E below, it shall be unlawful for any person to take, catch or possess any Spanish mackerel less than 14 inches in total length.

C. Except as provided in subsection E below, it shall be unlawful for any person to take, catch or possess any king mackerel less than 14 inches in total length.

D. Total length shall be measured in a straight line from the tip of nose to the tip of the tail for the purposes of this regulation.

E. Nothing in this section shall prohibit the taking or catching of any Spanish mackerel or king mackerel, less than 14 inches total length, by licensed pound net, nor the possession of any Spanish mackerel or king mackerel taken by licensed pound net and measuring less than 1 inches total length.

§ 5. Commercial and recreational quotas established; provisions for close of fishery established.

A. This regulation incorporates, by reference, the commercial and recreational catch quotas established under the provisions of the South Atlantic Fishery Management Council Coastal Migratory Pelagic Fishery Management Plan, as described in 50 CFR Part 642, and as in effect on the date of the adoption of this regulation.

B. It shall be unlawful to take or catch from the tidal waters of Virginia with commercial gear any Spanish mackerel or king mackerel at such time as that species' commercial catch quota, as established under subsection A of this section, is reached.

C. It shall be unlawful to take or catch from the tidal waters of Virginia with hook-and-line, rod-and-reel, or hand-line any Spanish mackerel or king mackerel at such time as that species' recreational catch quota, as established under subsection A of this section, is reached.

§ 6. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdemeanor.

/s/ William A. Pruitt

Commissioner
Date: May 31, 1991

* * * * * * * *

Title of Regulation: **VR 450-01-0071. Pertaining to the Alteration of Summer Flounder.**

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

Effective Date: June 8, 1991.

Preamble:

This regulation establishes further controls on the handling of summer flounder to enhance compliance with its minimum size limit and catch limit.

VR 450-01-0071. Pertaining to the Alteration of Summer Flounder.

§ 1. Authority and effective date.

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

B. The effective date of this regulation is June 8, 1991.

§ 2. Purpose.

The purpose of this regulation is to establish controls on the handling of summer flounder to enhance compliance with its minimum size limit and catch limit.

§ 3. Alteration of summer flounder prohibited.

A. Except as provided in subsection B, it shall be unlawful for any person aboard any vessel to alter any summer flounder or to possess any altered summer flounder such that its total length or species cannot be accurately determined.

B. Summer flounder may be filleted at sea, provided carcasses of the summer flounder are kept in possession so that total length and species can be determined at dockside if necessary. Nothing in this section shall prohibit the filleting or similar preparation of any summer flounder aboard any vessel which is secured to a dock.

§ 4. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdeameanor.

/s/ William A. Pruitt
Commissioner
Date: May 31, 1991

* * * * * * * *

Title of Regulation: **VR 450-01-0072. Pertaining to the Removal of Gill Nets and Other Nonfixed Finfishing Gear.**

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

Effective Date: June 8, 1991.

Preamble:

This regulation establishes procedures for the confiscation of gill nets and other moveable fishing devices which are abandoned or improperly fished.

VR 450-01-0072. Pertaining to the Removal of Gill Nets and Other Nonfixed Finfishing Gear.

§ 1. Authority and effective date.

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

C. The effective date of this regulation is June 8, 1991.

§ 2. Purpose.

The purpose of this regulation is to ensure that gill nets and other nonfixed finfishing gear are properly fished and to establish procedures for the removal of those nets which are abandoned or improperly fished.

§ 3. Fishing requirement; notification procedures.

A. It shall be unlawful for any person, firm, or corporation to set any gill net or nonfixed finfishing device and let said net or device remain unfished.

B. If, upon visual observation, any Marine Patrol Officer determines on reasonable evidence that any gill net or nonfixed finfishing device has not been fished, he shall notify the licensee as established in subsection C of this section, and if the licensee fails to fish or remove said gill net or nonfixed finfishing device within 24 hours after notification, the licensee shall be guilty of a violation of this regulation and the Marine Patrol Officer is authorized to confiscate said gill net or nonfixed finfishing device.

C. A verbal warning by a Marine Patrol Officer to the licensee by telephone or in person, or the placement of a warning tag on the gill net or nonfixed device adjacent to the license tag shall constitute notification to the licensee of a potential violation. Warning tags shall explain that the gear must be fished or removed from the water within 24 hours or the gear will be confiscated.

§ 4. Penalty.

As set forth in § 28.1-23 of the Code of Virginia, any person, firm or corporation violating any provision of this regulation shall be guilty of a Class 1 misdeameanor.

/s/ William A. Pruitt
Commissioner
Date: May 31, 1991

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

BOARD OF DENTISTRY

Title of Regulation: **VR 255-01-1. Board of Dentistry Regulations.**

Governor's Comment:

I support the form and the content of this proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: June 15, 1991

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: **State Plan for Medical Assistance Relating to Estimated Acquisition Cost Pharmacy Reimbursement.**
VR 460-02-4.1920. Methods and Standards for Establishing Payment Rates - Other Types of Care.

Governor's Comment:

I concur with the form and the content of this proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: June 20, 1991

* * * * * * * *

Title of Regulation: **VR 460-04-8.8. Regulations for Hospice Services.**

Governor's Comment:

I concur with the form and the content of this proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: June 20, 1991

* * * * * * * *

Title of Regulation: **VR 460-04-8.4. Home and Community Based Care Waiver Services for Elderly and Disabled Individuals.**

Governor's Comment:

I concur with the form and the content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: June 14, 1991

BOARD OF MEDICINE

Title of Regulation: **VR 465-02-01. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology, and Acupuncture.**

Governor's Comment:

I concur with the form and content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: June 20, 1991

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-45-1. Child Protective Services Central Registry Information**

Governor's Comment:

I concur with the form and the content of this proposal. My final approval is contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: June 20, 1991

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-45-3. Child Protective Services Release of Information to Family Advocacy Representatives of the United States Armed Forces.**

Governor's Comment:

I concur with the form and the content of this proposal. My final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: June 20, 1991

STATE WATER CONTROL BOARD

Title of Regulation: **VR 680-21-00. Water Quality Standards.**
VR 680-21-01.11. Chlorine Standard and Policy.
VR 680-21-07.1. Special Standards and Requirements.

VR 680-21-08.15. Tennessee and Big Sandy River Basin.

Governor's Comment:

This proposed action is meant to address a concern for the Town of Cleveland's ability to pay for wastewater treatment facilities designed to ensure protection of endangered species. While I realize the need to ensure the economic vitality of the Commonwealth's communities, I also recognize the need to protect our natural resources. Therefore, I request that the State Water Control Board carefully consider all alternatives to the proposed regulation before taking final action on it.

/s/ Lawrence Douglas Wilder
Governor
Date: June 20, 1991

Symbol Key †
† Indicates entries since last publication of the Virginia Register

DEPARTMENT OF AGRICULTURE AND CONSUMER 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 Agriculture and Consumer Services intends to consider amending regulations entitled: **VR 115-04-12. Rules and Regulations for the Enforcement of the Virginia Gasoline and Motor Fuels Law.** The purpose of the proposed action is to adopt a uniform system of color code identification for underground petroleum storage tanks. This action is at the request of the 1991 Virginia General Assembly contained in House Joint Resolution 304. Public comment is particularly welcome relating to the "unusual circumstances" or "other methods" mentioned in the final paragraph of the resolution that may not require a regulation.

GENERAL ASSEMBLY OF VIRGINIA--1991 SESSION
HOUSE JOINT RESOLUTION NO. 304

Requesting the Department of Agriculture and Consumer Services to amend its regulations relating to petroleum product and motor fuel storage tanks.

Agreed to by the House of Delegates, January 29, 1991
Agreed to by the Senate, February 12, 1991

WHEREAS, at filling stations and similar facilities, motor fuels and other petroleum products are typically stored in underground storage tanks; and

WHEREAS, it is common for any given filling station to have several such storage tanks, each used to store a different type or grade of motor fuel or other petroleum product; and

WHEREAS, products stored in these tanks are ordinarily replenished from tank trucks by means of hoses inserted into the fill connections of these storage tanks; and

WHEREAS, it is highly desirable, in order to protect the health, safety, and welfare of the public, that prudent and effective measures be taken to prevent the accidental mixing of motor fuels or other petroleum products by refilling any such tank with a product other than that with which it was originally filled; and

WHEREAS, the American Petroleum Institute has recommended the use of color codes on the fill connections of these storage tanks to prevent accidental mixing of motor fuels or other petroleum products; and

WHEREAS, the Bureau of Weights and Measures of the Department of Agriculture and Consumer Services is responsible for regulating matters associated with the dispensing of properly identified and accurately measured motor fuels by filling stations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Agriculture and Consumer Services is requested to amend its regulations to require, except where justified by unusual circumstances or where other methods may be more appropriate, the use of a uniform statewide color code on the fill connections of motor fuel and petroleum product storage tanks in order to safeguard the public health, safety, and welfare by preventing accidental mixture of motor fuels and other petroleum products when such tanks are refilled.

Written comments may be submitted until August 19, 1991, 9 a.m.

Statutory Authority: § 59.1-156 of the Code of Virginia.

Contact: J. Alan Rogers, Program Manager, VDACS, Office of Weights and Measures, P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-2476.

Pesticide Control Board

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Pesticide Control Board intends to consider amending regulations entitled: **VR 115-04-20. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act.** The purpose of the proposed action is to establish a single product registration fee, to provide for the payment of certification fees biennially, and to delete the provision which allows applicants to furnish affidavits certifying that they have not engaged in the application of pesticides classified for restricted use in Virginia.

The Pesticide Control Board is of the opinion that the current two-tiered product registration fee has not had the desired effect, and that a single product registration fee would be more equitable and easier to administer. The implementation of a single tier system may cause an increase in fees currently paid by some registrants.

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Written comments may be submitted until 5 p.m., July 18, 1991.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, P.O. Box 1163, Rm. 401, 1100 Bank St., Richmond, VA 23209, telephone (804) 371-6558.

DEPARTMENT OF EDUCATION (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 Education intends to consider amending regulations entitled: **Regulations Governing Special Education Programs for Handicapped Children and Youth in Virginia.** The purpose of the proposed action is to revise the current regulations to incorporate both new legislative mandates and other advisable improvements.

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

Written comments may be submitted until July 15, 1991.

Contact: Anne P. Michie, Coordinator, Due Process Proceedings, Virginia Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2013.

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 §§ 6.1 and 6.7 of the rules and regulations to require health care institutions to file certified audited financial statements with the council no later than 120 days after the end of the institution's fiscal year. A 30-day extension could be granted for extenuating circumstances. A late charge of $10 per working day would be assessed for filings submitted past the due date.

Written comments may be submitted until August 26, 1991.

Statutory Authority: §§ 9-159(A)(i) and 9-164(2) of the Code of Virginia.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-05-01. Regulations Governing Physician's Assistants.** The purpose of the proposed action is to amend the license renewal period by deleting annual and enacting a biennial renewal period in each even-numbered year in the licensee's birth month.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until August 1, 1991.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9925.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-05-01. Regulations Governing Physician's Assistants.** The purpose of the proposed action is to amend § 2.1 General Requirements; § 2.2(D)(2) Renewal Reporting; and § 4.1(E) One-hour rule; and technical amendments for deleting "certificate" and inserting "license" where appropirate.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until August 15, 1991.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9925.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-07-01. Regulations Governing the Licensure and Practice of Nurse Practitioners** (issued jointly with the Board of Nursing). The purpose of the proposed action is to establish standards governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure appropriate standard of care for patients.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Written comments may be submitted until September 16, 1991.

Contact: Hilary H. Conner, M.D., Executive Director, Board of Medicine, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9908.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases or Abnormal Conditions of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.** The purpose of the proposed action is to review the regulations in response to the Governor's request. The board will entertain written comments for consideration on the present regulations.

Copies of the present regulations may be secured by phone request at (804) 662-9925.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Written comments may be submitted until September 3, 1991.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone (804) 662-9925.

BOARD OF NURSING

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Nursing intends to consider amending regulations entitled: **VR 495-02-1. Regulations Governing the Licensure of Nurse Practitioners** (adopted jointly with the Board of Medicine). The purpose of the proposed regulation is to establish standards governing the prescriptive authority of nurse practitioners as are deemed reasonable and necessary to ensure an appropriate standard of care for patients.

Written comments may be submitted until September 16, 1991.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, Virginia Board of Nursing, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9909.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider promulgating regulations entitled: **VR 615-01-36. General Relief (GR) Program - Locality Options.** The purpose of the proposed action is to adopt the expanded options included in the current emergency regulation VR 615-01-36 that was published in Volume 7, Issue 13, dated March 25, 1991, in the Virginia Register.

Written comments may be submitted until August 14, 1991, to Diana Salvatore, Program Manager, Division of Benefit Programs, Department of Social Services, 8007 Discovery Drive, Richmind, Virginia 23229-0899.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-0899, telephone (804) 662-9217.

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† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Services intends to consider amending regulations entitled: **VR 615-70-17. Child Support Enforcement Program.** The purpose of the proposed action is to allow the department to administratively deviate from the child support guidelines. In response to public comment, the Department of Social Services plans to (i) study the issue of administrative deviation from the child support guidelines, and if determined appropriate, (ii) promulgate revisions allowing the department to deviate from the guidelines.

Written comments may be submitted until August 15, 1991, to Penelope Boyd Pellow, Division of Child Support Enforcement, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia 23229-8699.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, Division of Planning and Program Review, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229-0899, telephone (804) 662-9217.

GENERAL NOTICES

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† Public Notice

Take notice that a referendum will be conducted by mail ballot among Virginia small grains producers regardless of age who sold small grains during two of the past three years preceding October 4, 1991. The word "small grains" includes all barley, oats, rye, and wheat sold in the Commonwealth.

The purpose of this referendum is to allow Virginia farmers producing small grains to vote on whether or not they are willing to access themselves in the amount and manner below stated. The assessment shall be used by the Virginia Small Grains Board for research, education, publicity, and promotion of the sale and use of small grains.

The assessment to be voted on is 1/2 of one per cent of the selling price per bushel when sold. The processor, dealer, shipper, exporter or any other business entity who purchases small grains from the producer shall deduct the 1/2 of one per cent levy thereon and the levy shall be remitted to the Virginia State Tax Commissioner.

Producers must establish their eligibility to vote in this referendum by properly completing a certification form and returning the form to the Virginia Department of Agriculture and Consumer Services no later than August 30, 1991.

Eligible voters will be mailed a ballot and return envelope. Each eligible voter must return the ballot and ballot must be received by the Director, Division of

Marketing, Virginia Department of Agriculture and Consumer Services on or before 5 p.m. October 4, 1991.

Producers may obtain eligibility certification forms from the following sources: County Extension Agent Offices; Virginia Small Grains Association, P.O. Box 400, Heathsville, VA 22473; Virginia Department of Agriculture and Consumer Services, Division of Marketing, P.O. Box 1163, Richmond, VA 23209.

COUNCIL ON THE ENVIRONMENT

† Public Notice

Notice of the Availability for Public Review

An Environmental Impact Assessment for an Exploratory Oil or Gas Well to be Drilled in King George County, Virginia.

Purpose of Notice: This notice informs persons interested in reviewing and commenting on the environmental impact assessment described herein of the availability of the assessment as required by § 62.1-195.1(D) of the Code of Virginia. A general description of the proposed activity, its location, and the content of the environmental impact assessment follow.

Location: Texaco, Inc. has proposed locating an exploratory oil or gas well in King George County. The site for the exploratory well is to be located on a tract of land bordered by Route 205 on the south, approximately one mile west of Ninde, Virginia, and is roughly opposite the cultural feature identified as "Prince Cemetery" on the Dahlgren quadrangle, USGS topographic map, 7.5 minute series. The proposed well site and associated lease boundaries are generally described in the accompanying map.

Project Description: The proposed exploratory well drilling operation will be conducted to evaluate the potential for marketable quantities of oil or gas resources to exist in the Taylorsville basin located in Tidewater Virgina. The proposed drilling operation would require three to four weeks for site preparation, 12 to 14 weeks for drilling, four to six weeks for completion and testing as warranted, and three to four weeks for site restoration. The well site will require a maximum area of 3.5 acres. The site is currently unused pastureland. Employees will live on-site and there will be on-site sewage treatment facilities. The drill site will be designed to contain a discharge of all fluids generated within the drill site. The drilling operations will be conducted 24 hours per day.

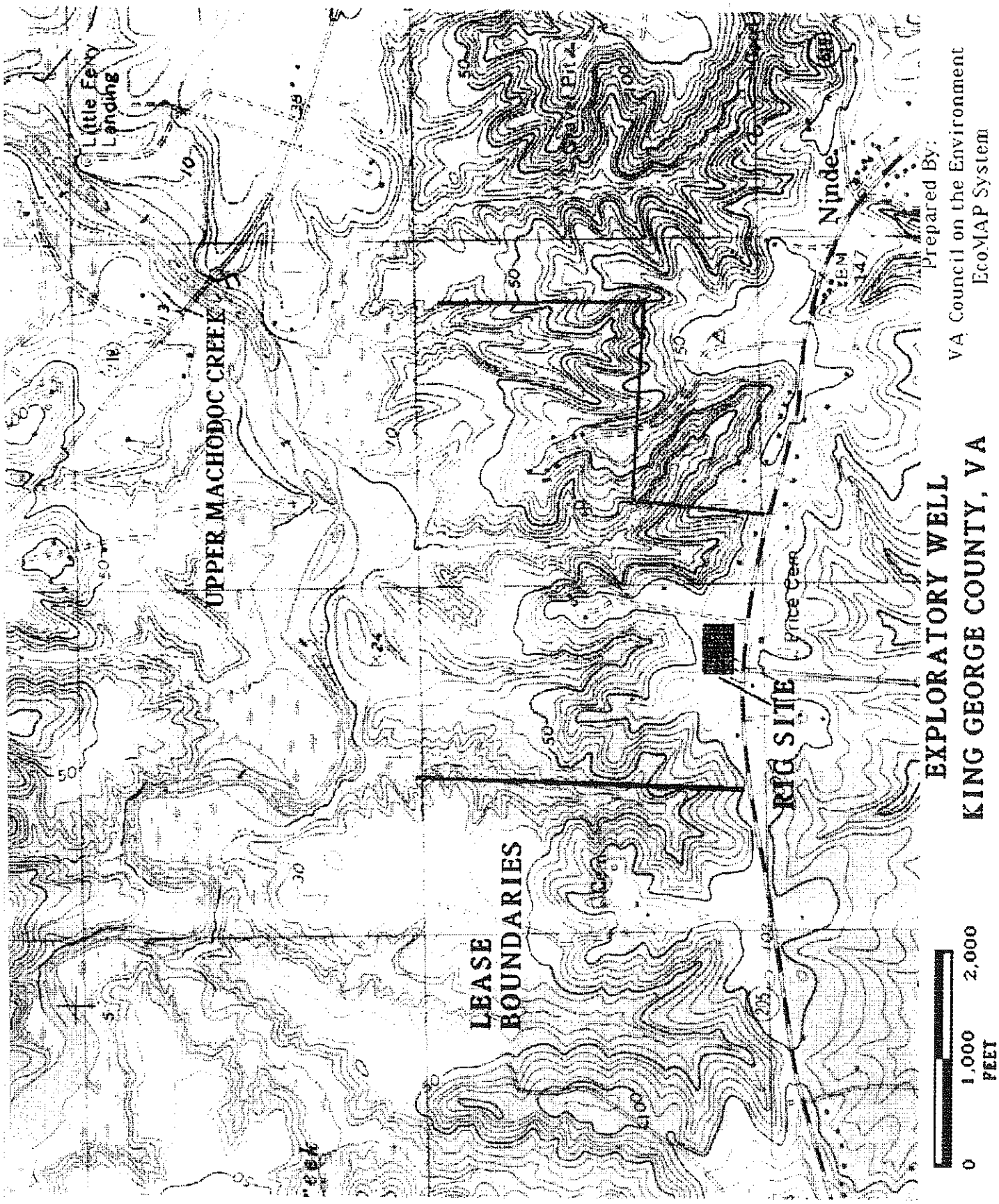
The environmental impact assessment submitted for the proposed project includes a description of the proposed well drilling site and the vicinity, a description and evaluation of the potential environmental impacts that may result if the exporatory well is constructed, an assessment of the potential environmental impacts that may result from accidental events, methodologies which would be put in place to minimize the likelihood of an accidental event, and control measures to minimize impacts should an accidental event occur. A discussion of the types and magnitude of environmental impacts which may occur as a result of longer-term production activities is included should the exporatory well prove successful.

Location of the Assessment: A copy of the assessment may be reviewed during regular business hours at the offices of the Council on the Environment, 202 North Ninth Street, 9th Floor, Suite 900, Richmond, Virginia. Another copy of the assessment will be available for review at the Smoot Memorial Library located in King George, Virginia, on Route 3 next the the King George County Courthouse. The summer library hours are 10 a.m. to 9 p.m. Tuesday through Thursday and 10 a.m. to 5 p.m. Friday and Saturday.

Deadline for Public Comment: Written comments on the environmental impacts of the proposed activity may be submitted until 5 p.m., August 16, 1991. Comments must be addressed to:

Keith J. Buttleman, Administrator
Virginia Council on the Environment
202 N. Ninth Street
Suite 900
Richmond, VA 23219

Contact: For additional information, contact Jay Robers, Council on the Environment at the address indicated above or call (804) 786-4500 or (804) 371-7604/TDD.


Little Ferry Landing
UPPER MACHODOC CREEK
LEASE BOUNDARIES
RIG SITE
Prince Dem
Ninde
EXPLORATORY WELL
KING GEORGE COUNTY, VA
Prepared By:
VA Council on the Environment
EcoMAP System
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FEET

STATE BOARD OF HEALTH

† Public Notice

Legal Notice of Opportunity to Comment on Proposed State Plan of Operations and Administration of Special Supplemental Food Program for Women, Infants and Children (WIC) for Federal Fiscal Year 1992

Pursuant to the authority vested in the State Board of Health by § 32.1-12 and in accordance with the provisions of Title 9, Chapter 1.1:1 of Public Law 95-627, notice is hereby given of a public comment period to enable the general public to participate in the development of the Special Supplemental Food Program for Women, Infants and Children (WIC) for Federal Fiscal Year 1992.

Written comments on the proposed plan which are postmarked no later than July 31, 1991, will be accepted in the office of the Director, WIC Program, State Department of Health, P.O. Box 2448, Richmond, Virginia 23218.

The proposed State Plan of WIC Program Operations and Administration may be reviewed at the office of your health district headquarters during public business hours beginning July 1, 1991. Please contact your local health department for the location of this office in your area.

VIRGINIA SWEET POTATO BOARD

A referendum will be held between July 10, 1991, and August 1, 1991. The purpose of the referendum is to determine if sweet potato growers in the state wish to tax themselves two cents per bushel of sweet potatoes grown in lieu of one cent with the revenue to be used for further research, education and promotion.

Additional information may be obtained from: L. William Mapp, Secretary, P.O. Box 26, Onley, Virginia 23418, telephone (804) 787-5867

VIRGINIA CODE COMMISSION

NOTICE 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.

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

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Title of Regulation: **VR 400-02-0011. Rules and Regulations for Allocation of Low-Income Housing Tax Credits.**

Publication: VA.R. 7:19 2823-2837 June 17, 1991.

Correction to Final Regulation:

1. Page 2828, second column, paragraph 2, after the sentence ending "...the sole discretion or control of the lender." add:

"The executive director may treat a reservation of funds from the Virginia Housing Partnership Fund as a firm financing commitment."

2. Page 2829, second column, 5th paragraph, the threshold amount of points should be 190 instead of 220.

DEPARTMENT OF MINES, MINERALS AND ENERGY

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

Publication: VA.R. 7:20 3048-3066 July 1, 1991.

Correction to Emergency Regulation:

Page 3053, § 5 C, subdivisions 1, 2 and 3 are corrected as follows:

1. New coalbed methane drilling location – 0 CBM

2. Coalbed methane gas well – ✳ CBM

3. Abandoned coalbed methane gas well – ✳ CBM

Page 3055, § 11 F and § 12 B 1 make reference to the incorrect VR numbers. "VR 480-21-04" should be VR 680-21-04" and VR 480-21-05" should be "680-21-05."

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

July 15, 1991 - 10 a.m. – Open Meeting
July 16, 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 and conduct disposition of enforcement cases; (iv) conduct regulatory review/public hearing July 16th; and (v) conduct routine board business.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

July 16, 1991 - 11 a.m. – Public Hearing
3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to amend regulations entitled: **VR 105-01-02. Board for Accountancy Regulations.** The proposed regulations establish continuing professional education requirements for original licensure and license renewal.

Statutory Authority: § 54.1-201(5) of the Code of Virginia.

Written comments may be submitted until August 2, 1991.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

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July 16, 1991 - 11 a.m. – Public Hearing
3600 West Broad Street, Richmond, Virginia.

Notice is hereby given in accordance with this agency's public participation guidelines that the Board for Accountancy intends to adopt regulations entitled: **VR 105-01-03. Continuing Professional Education Sponsor Registration Rules and Regulations.** The proposed regulations establish entry requirements, renewal/reinstatement requirements and establish the standards of practice for continuing professional education sponsors.

Statutory Authority: §§ 54.1-201(5) and 54.1-2002(C) of the Code of Virginia.

Written comments may be submitted until August 2, 1991.

Contact: Roberta L. Banning, Assistant Director, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

† **July 23, 1991 - 9 a.m.** – Open Meeting
Eastern Shore Chamber of Commerce, Meeting Room, Route 13 South, Melfa, Virginia. ♿

The board will review issues relating to 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. The final item for the meeting will be an opportunity for the public to make comment to the board, pursuant to § 2.1-343 of the Code of Virginia, with time reserved for this purpose not to exceed 30 minutes.

Contact: Roy E. Seward, Secretary to the Board, VDACS, Room 210, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 786-3501 or (804) 371-6344/TDD ☎

Pesticide Control Board

CORRECTED NOTICE
July 18, 1991 - 10 a.m. – Open Meeting
July 19, 1991 - 9 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Board Room No. 204, 1100 Bank Street, Richmond, Virginia.

July 18, 1991, 10 a.m. - Pesticide Control Board committee meetings.
July 19, 1991, 9 a.m. - Pesticide Control Board will conduct a general business meeting.

Portions of the meeting may be held in closed session, pursuant to § 2.1-344 of the Code of Virginia.

The public will have an opportunity to comment on any matter not on the Pesticide Control Board's Agenda at 9 a.m., July 19, 1991.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

STATE AIR POLLUTION CONTROL BOARD

† **July 26, 1991 - 9 a.m.** – Open Meeting
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia.

The board will consider emission standards for noncriteria pollutants, policy for implementing noncriteria pollutant program, I/M enforcement procedures, and topics pertaining to best available control technology (BACT).

Contact: Dr. Kathleen Sands, Information Services Manager, Department of Air Pollution Control, P.O. Box 10089, Richmond, VA 23240, telephone (804) 225-2722.

DEPARTMENT OF AIR POLLUTION CONTROL

† **July 18, 1991 - 7 p.m.** – Public Hearing
Social Services Building, Board of Supervisors Room, 117 South Court Street, Luray, Virginia.

The hearing is being conducted to permit public comments regarding proposed issuance of a State Air Pollution Control Board permit to the Columbia Gas Transmission Corporation for construction and operation of a natural gas compressor station on the northwest side of State Road 685, approximately 1.7 miles southwest of the northermost intersection with U.S. Route 340 in Page County.

Contact: John R. McKie, Environmental Engineer Senior, Virginia Department of Air Pollution Control, Region VII, 6225 Brandon Ave., Suite 310, Springfield, VA 22150, telephone (703) 644-0311.

ASAP POLICY BOARD - ROCKBRIDGE

† **July 30, 1991 - 3 p.m.** – Open Meeting
2044 Sycamore Avenue, Buena Vista, Virginia.

The board will conduct their regular business meeting.

Contact: S. Diane Clark, Director, 2044 Sycamore Ave., Buena Vista, VA 24416, telephone (804) 261-6281.

AUCTIONEERS BOARD

† **August 13, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia.

An open meeting to conduct regulatory review and other matters which require board action.

Contact: Mr. 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

July 18, 1991 - 9 a.m. – Open Meeting
1601 Rolling Hills Drive, Richmond, Virginia.

A regular meeting.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229-5005, telephone, (804) 662-9111.

STATE BUILDING CODE TECHNICAL REVIEW BOARD

† **July 19, 1991 - 10 a.m.** – Open Meeting
Fourth Street State Office Building, 205 North Fourth Street, Second Floor Conference Room, Richmond, Virginia. (Interpreter for deaf provided if requested)

The board will meet to consider requests for interpretation of the Virginia Uniform Statewide Building Code, to consider appeals from the rulings of local appeal boards regarding application of the Virginia Uniform Statewide Building Code, and to approve minutes of previous meeting.

Contact: Jack A. Proctor, 205 N. Fourth St., Richmond, VA 23219.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **July 24, 1991 - 10 a.m.** – Open Meeting

General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The board will consider adoption of proposed amended regulations entitled: VR 173-02-01. Chesapeake Bay Preservation Area Designation and Management Regulations. Public comment will be heard early in the meeting, and the board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by July 15, 1991.

† **August 21, 1991 - 10 a.m.** – Open Meeting
General Assembly Building, Senate Room B, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be heard early in the meeting. A tentative agenda will be available from the Chesapeake Bay Local Assistance Department by August 14, 1991.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

COUNCIL ON CHILD DAY CARE AND EARLY CHILDHOOD PROGRAMS

† **July 18, 1991 - 10 a.m.** – Public Hearing
James Monroe Building, 101 North 14th Street, Conference Room C, First Floor, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A public hearing on the child care and development block grant plan. Public comments will be received at the meeting.

Contact: Linda Sawyers, Director, Council on Child Day Care and Early Childhood Programs, Suite 1116, Washington Bldg., 1100 Bank St., Richmond, VA 23219, telephone (804) 371-8603.

INTERAGENCY CONSORTIUM ON CHILD MENTAL HEALTH

August 7, 1991 - 9:15 a.m. – Open Meeting
September 4, 1991 - 9:15 a.m. – Open Meeting
Youth and Family Services, 700 Centre, 7th & Franklin Streets, Richmond, Virginia. ♿

A meeting to (i) discuss technical assistant position; (ii) set date for quarterly review; (iii) review fiscal report; (iv) review old applications, and (v) review new applications.

Contact: Dian M. McConnel, Chair, P.O. Box 3AG, Richmond, VA 23208-1108, telephone (804) 371-0700.

INTERDEPARTMENTAL REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN

Coordinating Committee

July 19, 1991 - 8:30 a.m. – Open Meeting
Office of Coordinator, Interdepartmental Regulation, 1603 Santa Rosa Road, Tyler Building, Suite 208, Richmond, Virginia. ♿

Regularly scheduled meetings to consider such administrative and policy issues as may be presented to the committee. A period for public comment is provided at each meeting.

Contact: John J. Allen, Jr., Coordinator, Interdepartmental Regulation, Office of the Coordinator, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-7124.

INTERDEPARTMENTAL COUNCIL ON RATE-SETTING FOR CHILDREN'S FACILITIES

July 23, 1991 - 9:30 a.m. – Open Meeting
St. Joseph's Villa's Conference Room, 8000 Washington Highway, Richmond, Virginia. ♿

The council will elect the new officers for 1991-92, discuss the process to review rate-setting regulations, and update the report on the progress of the Council on Community Services for Youth and Families.

Contact: Mr. H. Russell Harris, Department of Social Services, 8008 Discovery Dr., Richmond, VA 23288, telephone (804) 662-9011.

STATE BOARD FOR COMMUNITY COLLEGES

July 17, 1991 - Time to be Determined – Open Meeting
Board Room, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

The board will meet for a working session (time TBA). Committee meetings will convene following the working session.

July 18, 1991 - 9 a.m. – Open Meeting
Board Room, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia.

A regularly scheduled meeting. The agenda will be available by July 8, 1991.

Contact: Mrs. Joy Graham, Board Room, 15th Floor, Monroe Building, 101 North 14th Street, Richmond, Virginia, telephone (804) 225-2126.

COMPENSATION BOARD

July 18, 1991 - 5 p.m. – Open Meeting
August 28, 1991 - 5 p.m. – Open Meeting
September 26, 1991 - 5 p.m. – Open Meeting
Room 913/913A, 9th Floor, Ninth Street Office Building, 202 North Ninth Street, 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, Virginia 23206-0686, telephone (804) 786-3886/TDD 5

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

July 19, 1991 - Noon – Open Meeting
Planning Commission Conference Room, Fifth Floor, City Hall, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor Street, Suite 326, Richmond, VA 23219, telephone (804) 786-4132.

Soil and Water Conservation Board

† **July 18, 1991 - 9 a.m.** – Open Meeting
Virginia State University, Chesterfield Avenue, Petersburg, Virginia.

† **September 18, 1991 - 6 p.m.** – Dinner Meeting
The Ground Round, 102 Tower Drive, Danville, Virginia.

The board will hold its regular bi-monthly meeting.

Contact: Donald L. Wells, Assistant Director, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-4356.

BOARD FOR CONTRACTORS

July 17, 1991 - 9 a.m. – Open Meeting
3600 West Broad Street, Conference Room 1, Richmond, Virginia. ♿

A regular quarterly meeting of the board to address policy and procedural issues as well as other routine business matters. The meeting is open to the public; however, a portion of the board's discussions may be conducted in executive session.

Contact: Martha S. LeMond, Assistant Director, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8667.

VIRGINIA COUNCIL ON COORDINATING PREVENTION

July 15, 1991 - 2:30 p.m. and 6 p.m. – Public Hearing
State Capitol, House Room 4, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Public hearing on draft "Goals and Objectives of 1992-2000 Comprehensive Prevention Plan for Virginia."

Contact: Sharyl Adams, Executive Assistant, Department of MHMRSAS, P.O. Box 23214, Richmond, VA 23214, telephone (804) 786-1530.

July 19, 1991 - 10 a.m. – Open Meeting
Virginia Housing Development Authority, Conference Room 3, Richmond, Virginia. ♿

A regular quarterly meeting of the council. Awards will be presented for Prevention Excellence and public comment on the draft 1992-2000 Comprehensive Prevention Plan for Virginia will be discussed.

Contact: Sharyl Adams, Executive Assistant, Department of MHMRSAS, P.O. Box 23214, Richmond, VA 23214, telephone (804) 786-1530.

BOARD OF CORRECTIONS

July 17, 1991 - 10 a.m. – Open Meeting
August 21, 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 to the board.

Contact: Ms. Vivian T. Toler, Secretary to the Board, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

Liaison Committee

July 24, 1991 - 9 a.m. – Open Meeting
Omni Hotel, Norfolk, Virginia. ♿

The committee will continue to address criminal justice issues.

Contact: Louis E. Barber, Sheriff, Montgomery County, P.O. Drawer 149, Christiansburg, VA 24073, telephone (703)

382-2951.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Court Appointed Special Advocate Program Advisory Committee

† **July 29, 1991 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority Building, 601 South Belvidere Street, Richmond, Virginia.

The Advisory Committee will hold a general business meeting.

Contact: Paula J. Scott, Staff Executive, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

CRIMINAL JUSTICE SERVICES BOARD

† **October 2, 1991 - 9 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal Justices Services Board intends to amend regulations entitled: **VR 240-03-1. Rules Relating to Compulsory Minimum Training Standards for Private Security Services Business Personnel.** The regulations set forth minimum training standards and in-service training requirements for private security services personnel.

STATEMENT

Purpose: The purpose of this regulation is to mandate compulsory minimum training standards and in-service training requirements for private security services business personnel to ensure a professional level of training that best serves to protect the public safety from unqualified or incompetent persons.

Estimated Impact:

Number and Types of Regulated Entities Affected: Approximately 400 private security services businesses and 100 approved private security training schools that employ or train compliance agents, guards or private investigators and an undertermined number of persons completing training without the benefit of employment.

Projected Cost to Regulated Entities for Implementation and Compliance: The increase in training hours will result in additional training costs. The additional cost is expected to be minimal and should have limited fiscal impact beyond existing requirements. The additional cost will be absorbed by private security businesses and individuals enrolling in such training on an independent basis.

Projected Cost to Agency for Implementation and Enforcement:

Costs incurred by the Department of Criminal Justice Services for implementation is primarily for printing, mailing and complying with the provisions of the Administrative Process Act, applicable Executive Orders and the Department's Public Participation Guidelines. Implementation cost to the agency is not expected to exceed $3,000.

Compliance and monitoring activities are currently being conducted with existing regulations. Compliance and monitoring activities associated with the amended rules will be handled in the same manner as is now in place for the existing regulation. Compliance and monitoring cost will not be adversely affected.

Source of Funds: Funds for the administration of this program are provided from a special fund appropriation to the agency from the Department of Commerce.

Explanation of Need and Potential Consequences that May Result in the Absence of these Regulations: These regulations are needed to continue to provide guidelines and training standards to those individuals responsible for the safeguarding of people and property through private security services. Private security services business personnel should be knowledgeable and sensitive oi individual rights and the laws that impact upon their duties. Without these regulations, protection of the public safety may be severely affected.

Statutory Authority: § 9-182 of the Code of Virginia.

Written comments may be submitted until September 16, 1991, to L.T. Eckenrode, Department of Criminal Justice Services, 805 East Broad Street, Richmond, Virginia 23219.

Contact: Paula Scott, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF DENTISTRY

† **July 31, 1991 - 1 p.m.** – Open Meeting
† **August 1, 1991 - 8:30 a.m.** – Open Meeting
† **August 2, 1991 - 8:30 a.m.** – Open Meeting
† **August 3, 1991 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Surry Building, Richmond, Virginia.

This is a public meeting and the public is invited to observe. No public testimony will be received by the board at this meeting.

On July 31, 1991, committees will meet from 1 p.m. to 5 p.m.

There will be a regular board business meeting on August 1, 2, and 3. The following committees will present their reports: Regulatory Committee, Advertising Committee, Executive Committee, Legislative Committee, Budget Committee, Exam Committee, and Dental Hygiene Endorsement Committee.

Formal hearings will be held on August 1 and 2.

Contact: Nancy Taylor Feldman, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9906.

STATE BOARD OF EDUCATION

July 25, 1991 - 8 a.m. – Open Meeting
July 26, 1991 - 8 a.m. – Open Meeting
August 14, 1991 - 7:30 a.m. – Open Meeting
James Monroe Building, Conference Rooms D & E, 101 North Fourteenth Street, 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, Board of Education, State Department of Education, P.O. Box 6-Q, Richmond, VA 23216, telephone (804) 225-2540.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

September 5, 1991 - 5:30 p.m. – Open Meeting
October 3, 1991 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Chesterfield, Virginia. &

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Linda G. Furr, Assistant Emergency Services, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER

July 24, 1991 - 6:30 p.m. – Open Meeting
Gloucester Administration Building Conference Room, Gloucester, Virginia. &

The summer quarterly meeting of the Gloucester Local Emergency Planning Committee will address: adoption of the Hazardous Materials Plan update and discussion of the annual exercise to be conducted in the fall.

Contact: Georgette N. Hurley, Assistant County Administrator, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042.

LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF PRINCE WILLIAM, CITY OF MANASSAS, AND CITY OF MANASSAS PARK

July 15, 1991 - 1:30 p.m. – Open Meeting
† **August 19, 1991 - 1:30 p.m.** – Open Meeting
† **September 16, 1991 - 1:30 p.m.** – Open Meeting
1 County Complex Court, Prince William, Virginia. &

The Local Emergency Planning Committee will meet 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.

LOCAL EMERGENCY PLANNING COMMITTEE - ROANOKE VALLEY

† **July 17, 1991 - 9 a.m.** – Open Meeting
Salem Civic Center, Room C, 1001 Roanoke Boulevard, Salem, Virginia. &

The committee will meet to receive public comment, receive reports from community coordinators, and receive reports from standing committees.

Contact: Danny W. Hall, Fire Chief/Emergency Services Coordinator, Salem Fire Dept., 105 S. Market St., Salem, VA 24153, telephone (703) 375-3080.

LOCAL EMERGENCY PLANNING COMMITTEE - SCOTT COUNTY

July 15, 1991 - 1:30 p.m. – Open Meeting
County Office Building, 112 Water Street, Gate City, Virginia. &

Update of SARA, Title III for Scott County's LEPC.

Contact: Barbara Edwards, Public Information Officer, 112 Water St., Suite 1, Gate City, VA 24251, telephone (703) 386-6521.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

July 17, 1991 - 3 p.m. – Open Meeting
Old Frederick County Courthouse, Conference Room, Winchester, Virginia.

Regular quarterly meeting of the LEPC.

Contact: L.A. Miller, Fire Chief, Winchester Fire & Rescue Department, 126 North Cameron Street, Winchester, VA 22602, telephone (703) 662-2298.

VIRGINIA EMERGENCY RESPONSE COUNCIL

September 11, 1991 - 10 a.m. – Open Meeting
Conference Room B, Monroe Building, 101 North 14th Street, Richmond, Virginia. &

This meeting will update the VERC on new developments in SARA Title III, Emergency Planning and Community "Right-to-Know"; and will discuss the impact of waste minimization and pollution prevention initiatives on program activities.

Contact: Cathy L. Harris, Environmental Program Manager, Department of Waste Management, 14th Floor, Monroe Bldg., 101 N. 14th Street, Richmond, VA 23219, telephone (804) 225-2513, (804) 225-2631, toll-free 1-800-552-2075 or (804) 371-8737/TDD 5

VIRGINIA EMPLOYMENT COMMISSION

Advisory Board

July 17, 1991 - 10:30 a.m. – Open Meeting
July 18, 1991 - 5:30 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 E. Main St., Richmond, VA 23219, telephone (804) 371-6004.

COUNCIL ON THE ENVIRONMENT

† **September 13, 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 Council on the Environment intends to adopt regulations entitled: **VR 305-01-001. Public Participation Guidelines.** The proposed regulation establishes the Council on the Environment's procedures for soliciting public participation in the formulation and development of regulations.

STATEMENT

Basis and Authority: Section 62.1-195.1 of the Code of Virginia, passed by the 1990 General Assembly, requires the Council on the Environment to develop a regulation guiding the preparation of an "environmental impact assessment" for oil or gas drilling activities in Tidewater Virginia. The section explicity directs council to develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments "in conformance with the Administrative Process Act." The Administrative Process Act (§ 9-6.14:1 et seq.) requires agencies to adopt procedures for soliciting the public's participation in the formulation and development of regulations.

Purpose: The proposed regulation establishes the Council on the Environment's procedures for soliciting public participation in the formulation and development of regulations. It discusses procedures for notifying and soliciting the views of interested parties on matters before the council and for submitting regulations for public comment. Council is currently operating under an emergency regulation entitled: "VR 305-01-001. Public Participation Guidelines" which was adopted on January 16, 1991. Adoption of the proposed regulation will result in the promulgation of Public Participation Guidelines on a permanent basis.

Estimated Impact:

Entities Affected: All public comment on regulations being developed by the council will be governed by the public participation guidelines. The positive effect of this regulation will be that clear procedures governing public comment will be established. No member of the general public will be adversely affected by the regulation.

On August 27, September 10, and September 24, 1990, a notice of intended regulatory action (NOIRA) was published in the Virginia Register requesting comment from interested parties on the development of the council's public participation guidelines.

The Virginia, Maryland, and Delaware Association of Electric Cooperatives submitted written comments and the Virginia Petroleum Council submitted verbal comments in response to the NOIRA. No commentor opposed promulgation of public participation guidelines and these regulations should not be controversial.

On February 25, March 11, and March 25, 1991, a notice of intended regulatory action (NOIRA) was re-published in the Virginia Register requesting comment from interested parties on the development of the council's public participation guidelines.

No person submitted comments in response to the notice.

Statutory Authority: §§ 9-6.14:7.1, 10.1-1206, and 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Jay Roberts, Environmental Planner, 202 N. Ninth St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

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† **September 4, 1991 - 7 p.m.** – Public Hearing
King George, Virginia.

† **September 5, 1991 - 7 p.m.** – Public Hearing
Tappahannock, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Council on the Environment intends to adopt regulations entitled: **VR 305-02-01. Guidelines for the Preparation of Environmental Impact Assessments for Oil or Gas Well Drilling Operations in Tidewater Virginia.** The proposed regulation establishes criteria and procedures to be followed by applicants preparing and persons reviewing an environmental impact assessment for an oil or gas well drilling operation and related activities in Tidewater Virginia.

STATEMENT

Basis and Authority: Section 62.1-195.1 of the Code of Virginia, passed by the 1990 General Assembly, requires the Council on the Environment to develop a regulation guiding the preparation of an Environmental Impact Assessment (EIA) for oil or gas drilling activities proposed to be conducted in Tidewater Virginia. The section explicity directs council to "develop criteria and procedures to assure the orderly preparation and evaluation of environmental impact assessments..."

Purpose: The proposed regulation defines the criteria and procedures to be followed when preparing and reviewing an environmental impact assessment for an oil or gas well drilling operation and related production and transportation activities in Tidewater Virginia as required by § 62.1-195.1 of the Code of Virginia.

Summary: The basic information requirements of the criteria and procedures set forth in this regulation include describing (i) the proposed oil or gas operation, (ii) the environmental and natural resource features potentially affected by an oil or gas operation, (iii) the probability and consequences of an oil or gas discharge to the environment, (iv) oil or gas release contingency plans, (v) the fiscal and economic impacts associated with the proposed operation, (vi) the potential secondary environmental impacts resulting from induced economic development, and (vii) general review and comment procedures.

Estimated Impact:

Entities Affected: The regulation will affect any person proposing to drill an exploration or production oil or gas well in Tidewater Virginia. At this time, Texaco, Inc., has drilled one oil or gas exploration well in Tidewater Virginia. Texaco has submitted an application to drill a second exploratory well in Tidewater and has indicated it will drill a third exporatory well in Tidewater Virginia in the near future. No other entity has expressed an interest in drilling oil or gas wells in Tidewater Virginia to date.

Most oil or gas drilling activities being discussed in Tidewater Virginia to date focus on a geological formation known as the Taylorsville Basin which underlies several counties in Tidewater Virginia. The counties most often discussed as potential oil or gas exploration and production areas are King George, Westmoreland, Essex and Caroline Counties. Texaco drilled one exploration well in Westmoreland County in 1989 prior to the enactment of the environmental impact assessment requirement. Texaco stated in Spring, 1990, its intention to drill a new exploration well in King George County and new exploration well in Westmoreland County. Texaco has also proposed drilling an exploration well in Charles County, Maryland, which is located across the Potomac River from King George County.

The regulation will affect the oil or gas well permitting activities of the Department of Mines, Minerals and Energy (DMME). DMME must require the environmental impact assessment be included as a part of a permit application. DMME must notify the Administrator of the Council on the Environment to coordinate a review of an assessment with state agencies and other interested persons. The Administrator has up to 90 calendar days after the receipt of an environmental impact assessment to submit findings and recommendations to DMME. DMME may not issue a drilling permit in Tidewater Virginia while the assessment is being reviewed. DMME is to consider the findings and recommendations of the council before issuing a permit to drill.

The regulation will also affect council member agencies who review environmental impact assessments. It is estimated that reviewing agencies will typically spend as little as one hour to as much as 40 hours of staff time reviewing environmental impact assessments. The level of council member agency involvement will depend upon agency interest, specific agency management responsibilities, and the level of potential resource impacts identified by the EIA. We anticipate that as a number and degree of potential resource impacts identified by an EIA increase, the complexity and time commitment to the EIA review will also increase.

Statutory Authority: § 62.1-195.1 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Jay Roberts, Environmental Planner, 202 N. Ninth St., Suite 900, Richmond, VA 23219, telephone (804) 786-4500.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **July 29, 1991 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia.

The board will conduct its monthly board meeting and formal hearings. Public comment will be received during the last 30 minutes of the meeting.

† **July 30, 1991 - 9 a.m.** – Open Meeting
1601 Rolling Hills Drive, Conference Room 2, Richmond, Virginia.

The board will hold informal conferences.

Contact: Meredyth P. Partridge, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9907.

BOARD OF GAME AND INLAND FISHERIES

July 18, 1991 - 9:30 a.m. – Open Meeting
4010 West Broad Street, Richmond, Virginia. (Interpreter for deaf provided if requested)

Each committee agenda will include items appropriate to that specific committee, which may make recommendations to the board that will require action. The Planning Committee will meet at 9:30 a.m., followed by the Finance Committee, Liaison Committee, Wildlife and Boat Committee and end with the Law and Education Committee. In addition to regular committee agenda items, the following items of interest are planned for discussion in the Wildlife and Boat Committee:

1. The webless migratory game bird seasons will be discussed.
2. A report will be presented on the study conducted on the feasibility of bear and raccoon chase seasons.
3. Waterfowl zoning options will be discussed.
4. An individual has requested permission to appear before this committee to discuss deer farming.

Other general and administrative matters, as necessary will be presented for discussion.

July 19, 1991 - 9:30 a.m. – Open Meeting
4010 West Broad Street, Richmond, Virginia. (Interpreter for deaf provided if requested)

The board will meet to set the 1991-92 Virginia webless migratory game bird seasons (doves, woodcock, rail and snipe) based on the framework permitted by the U.S. Fish and Wildlife Service. In addition:

• Action will be taken on a proposed regulation to permit livetrapping of rabbits for release or restock purposes in Virginia at any time.

• Public input will be received, and the board will discuss a proposed Site Specific Agreement between the department and Ducks Unlimited, Inc., for the acquisition and management of a 415-acre tract on Back Bay, City of Virginia Beach, Virginia. If acceptable, the board will authorize the director of the department to enter into this agreement with Ducks Unlimited.

• Waterfowl zoning options will be discussed.

• A report, with possible recommendations, will be presented on the findings of the Wildlife and Boat Committee which was requested to study the feasibility of bear and raccoon chase seasons.

• Committee reports will be given and, if necessary, board action will be taken, based on committee recommendations. In addition, the Nominating Committee will present its recommendations for board officers for 1991-92.

• Other general and administrative matters, as necessary, will be discussed, and appropriate action will be taken.

Contact: Belle Harding, Secretary to Bud Bristow, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-1000 or toll-free 1-800-252-7717.

BOARD FOR GEOLOGY

† **August 15, 1991 - 9:30 a.m.** – Open Meeting
† **August 16, 1991 - 9:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Conference Room 1, 5th Floor, Richmond, Virginia.

The board will conduct its business meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

BOARD OF HEALTH PROFESSIONS

CHANGE IN TIME OF MEETING
July 16, 1991 - 10:30 a.m. – Open Meeting
Department of Health Professions, Conference Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. (Interpreter for deaf provided upon request)

The board will conduct its regular quarterly meeting. Agenda items include reports from standing and

special committees and a review of the legislative proposals of boards within the Department of Health Professions and of the proposed 1992-94 biennial budget of the department.

Contact: Richard D. Morrison, Ph.D., Executive Director, Department of Health Professions, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9904 or (804) 662-7197/TDD ☎ .

Administration and Budget Committee

† **July 15, 1991 - 7 p.m.** – Open Meeting
Department of Health Professions, Conference Room 2, 1601 Rolling Hills Drive, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The board will review its report and recommendations on the preliminary budget of the Department of Health Professions for the 1992-94 biennium. The report will be presented to the full Board of Health Professions at its meeting at 10:30 on Tuesday, July 16, 1991.

Compliance and Discipline Committee

† **July 16, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿ (Interpreter for deaf provided upon quest)

The committee will review its report to be presented to the Board of Health Professions at its meeting at 10:30 a.m. on this date. The report includes recommended action on findings and recommendations of a 1990 study of enforcement and discipline in the Department of Health Professions.

Executive and Legislative Committee

† **July 16, 1991 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The committee will meet to review matters to be brought before the Board of Health Professions at its meeting at 10:30 on this date, and to review legislation proposed by boards within the Department of Health Professions.

Task Force on Managed Health Care

July 17, 1991 - 10 a.m. – Open Meeting
General Assembly Building, 9th Floor, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The meeting of the Task Force will include presentations by Task Force members of position papers prepared by advisory organization and agencies.

July 17, 1991 - 3 p.m. – Public Hearing
July 17, 1991 - 7 p.m. – Public Hearing
General Assembly Building, Senate Room A, 910 Capitol Street, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Informational hearing on HJR 399 and the study of managed health care. Public comments are solicited on the effects of managed health care on health care costs, access and quality. Specifically HJR 399 (1991 Session) requests the Board of Health Professions to study the need for operational guidelines and other aspects of the ethics of managed health care, including public and private programs.

Committee on Professional Education and Public Affairs

† **July 15, 1991 - 7 p.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The committee will meet to plan its work for Fiscal Year 1991-92 related to professional education and public affairs programs of the Department of Health Professions.

Contact: Richard D. Morrison, Ph.D., Executive Director, Department of Health Professions, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **August 27, 1991 - 9:30 a.m.** – Open Meeting
Blue Cross/Blue Shield, Virginia Room, 2015 Staples Mill Road, Richmond, Virginia. ♿

The council will conduct its monthly meeting to address financial, policy or technical matters which may have arisen since the last meeting. The council's current bylaws will also be discussed and possibly amended.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

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July 23, 1991 - noon – Public Hearing
Blue Cross/Blue Shield, Virginia Room, 2015 Staples Mill Road, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Health Services Cost Review Council intends to amend regulations entitled: **VR 370-01-001. Rules and**

Regulations of the Virginia Health Services Cost Review Council. The proposed amendments 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. The amendments also clarify that health care institutions which are part of continuing care retirement centers, have licensed home for adult beds, or have licensed nursing home beds as part of a hospital, must segregate the patient care activities provided in its nursing home components from its nonpatient care activities when completing the report forms required by council.

Statutory Authority: §§ 9-158, 9-160 and 9-164 of the Code of Virginia.

Written comments may be submitted until July 20, 1991.

Contact: G. Edward Dalton, Deputy Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371/TDD ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

August 6, 1991 - 9 a.m. – Open Meeting
September 3, 1991 - 9 a.m. – Open Meeting
Hopewell Community Center, Second & City Point Road, Hopewell, Virginia. ♿ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Services Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Amusement Device Technical Advisory Committee

July 18, 1991 - 9 a.m. – Open Meeting
Seventh Floor Conference Room, 205 North Fourth Street, 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 N. Fourth Street, Richmond, VA 23219, telephone (804) 786-4752 and VTDD (804) 786-5405.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

July 15, 1991 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-06. Virginia Statewide Fire Prevention Code/1990.** The proposed amendments are necessary to incorporate fees for explosive permits and blaster certification authorized by emergency regulations effective January 1, 1991.

Statutory Authority: § 27-97 of the Code of Virginia.

Written comments may be submitted until August 5, 1991.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772.

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July 15, 1991 - 10 a.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1990.** The proposed amendments are necessary to incorporate provisions consistent with the National Flood Insurance Program relating to alterations and repairs of existing buildings located in a floorplan.

Statutory Authority: §§ 36-98 and 36-99 of the Code of Virginia.

CORRECTION TO WRITTEN COMMENT DATE
Written comments may be submitted until August 5, 1991.

Contact: Gregory H. Revels, Program Manager, Code Development Office, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772.

Regulatory Effectiveness Advisory Committee

August 8, 1991 - 8:30 a.m. – Open Meeting
Virginia Housing Development Authority, Training Room, 601 Belvidere Street, Richmond, Virginia. ♿

A meeting to develop positions relative to the challenges to the BOCA Committees actions on the 1991 proposed changes to the BOCA National Codes as presented in the Final Hearing Roster. REAC positions thus developed are forwarded as recommendations to

the Board of Housing and Community Development (BHCD). Positions approved by the board will be presented at the BOCA Annual Conference in Indianapolis, Indiana, September 15 through 20, 1991.

Contact: Carolyn R. Williams, Building Code Supervisor, 205 N. 4th St., Richmond, VA 23219, telephone (804) 371-7772.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

July 16, 1991 - 11 a.m. – Open Meeting
601 South Belvidere Street, Richmond, Virginia.

The annual meeting of the board to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; (iv) consider and, if appropriate, approve proposed amendments to the Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income; and (v) consider such other matters and take such other actions as they may deem appropriate. Various committees of the board may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

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† **August 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 Virginia Housing Development Authority intends to amend regulations entitled: **VR 400-02-0008. Rules and Regulations for Virginia Rental Rehabiliitation Program.** The purpose of this action is to amend the rules and regulations in conformance with amendments to the federal regulations applicable to the program.

STATEMENT

Subject, Substance and Issues: The proposed amendments to the rules and regulations for Virginia rental rehabilitation program ("rules and regulations") of the Virginia Housing Development Authority (the "authority") will correct references to section numbers in the Code of Federal Regulations as recently amended and will modify certain time limits, funding priorities, funding limits and the method of rental assistance allocation in accordance with the amendments to the federal regulations.

Impact: The authority does not expect that the proposed amendments to the rules and regulations will have any significant impact on the existing rental rehabilitation program. The authority does not expect that any significant costs will be incurred for the implementation of and compliance with the proposed amendments to the rules and regulations.

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Written comments may be submitted until August 15, 1991.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes Board

CHANGE IN MEETING TIME
July 30, 1991 - 10 a.m. – Open Meeting
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

Revised Proposed Agenda: An appeal by Stanley Construction Co., Inc., of Ashland, Virginia, from the denial of a Variance Request, has been added to the agenda. The following items are also included:

1. Hazardous Waste Operations and Emergency Response; Final Rule; Corrections

2. Amendment to the Construction Industry Standard for Sanitation, 1926.51; Technical Corrections

3. Air Contaminants, Final Rule; Grant of Partial Stay for Nitroglycerin

4. Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite; Extension of Partial Stay

5. Occupational Exposure to Formaldehyde; Extension of Administrative Stay

6. Amendment to the Bylaws of the Safety and Health Codes Board

7. Amendment to the Lead Standard

Contact: John J. Crisanti, Director, Office of Enforcement Policy, Department of Labor and Industry, P.O. Box 12064, Richmond, VA 23241, telephone (804) 786-2384.

VIRGINIA STATE LIBRARY AND ARCHIVES (LIBRARY BOARD)

July 19, 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 Library Board intends to amend regulations entitled: **VR 440-01-137.1. Standards for the Microfilming of Public Records for Archival Retention.** The amendments update requirements that microfilm of public archival records meet various criteria to ensure the film's permanent retention.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

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July 19, 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 Library Board intends to amend regulations entitled: **VR 440-01-137.2. Archival Standards for Recording Deeds and Other Writings by a Procedural Microphotographic Process.** The amendments update requirements that microfilms produced in a procedural microfilm process meet various criteria to ensure the film's permanent retention.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

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July 19, 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 Library Board intends to amend regulations entitled: **VR 440-01-137.4. Standards for the Microfilming of Ended Law Chancery and Criminal Cases of the Clerks of the Circuit Courts Prior to Disposition.** The amendments update requirements that microfilm of ended cases in circuit court meet various criteria to ensure the film's permanent retention.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

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July 19, 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 Library Board intends to amend regulations entitled: **VR 440-01-137.5. Standards for Computer Output Microfilm (COM) for Archival Retention.** The amendments update requirements that COM of public records meets various criteria to ensure the film's permanent retention.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

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July 19, 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 Library Board intends to amend regulations entitled: **VR 440-01-137.6. Standards for Plats.** The amendments update criteria for plats which are to be recorded in the circuit court clerk's office.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

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July 19, 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 Library Board intends to amend regulations entitled: **VR 440-01-137.7. Standards for Recorded Instruments.** The amendemts update criteria for instruments to be recorded in the circuit court clerk's office.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at

Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

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July 19, 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 Library Board intends to adopt regulations entitled: **VR 440-01-137.8. Standards for Paper for Permanent Circuit Court Records.** The purpose of the proposed action is to establish criteria for the paper to be used for the permanent records stored in the circuit court clerk's office.

Statutory Authority: § 42.1-82 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Dr. Louis H. Manarin, State Archivist, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-5579.

COMMISSION ON LOCAL GOVERNMENT

July 22, 1991 - 7:30 p.m. – Public Hearing
Town of Orange, Orange County area - Site to be determined.

Public hearing regarding the Town of Orange, Orange County annexation issue.

Persons desiring to participate in the Commission's oral presentations and requiring special accommodations or interpreter services should contact the Commission's offices at (804) 786-6508 or (804) 786-1860/TDD ☎ by July 15, 1991.

July 22, 1991 - 11 a.m. – Open Meeting
July 23, 1991 - 9 a.m. – Open Meeting
July 24, 1991 - (if needed) - Time to Be Announced – Open Meeting
Town of Orange, Orange County area - Site to be determined.

Oral presentations regarding the Town of Orange, Orange County annexation issue.

Persons desiring to participate in the Commission's oral presentations and requiring special accommodations or interpreter services should contact the Commission's offices at (804) 786-6508 or (804) 786-1860/TDD ☎ by July 15, 1991.

August 19, 1991 - 11 a.m. – Open Meeting
August 20, 1991 - (if needed) - Time to be announced – Open Meeting
City of South Boston, Halifax County - Site to be determined.

Oral presentations regarding the proposed reversion of the City of South Boston to town status in Halifax County.

Persons desiring to participate in the Commission's oral presentations and requiring special accommodations or interpreter services should contact the Commission's offices at (804) 786-6508 or (804) 786-1860 TDD ☎ by May 23, 1991.

August 20, 1991 - 7 p.m. – Public Hearing
City of South Boston, Halifax County area - Site to be determined.

Public hearing regarding the proposed reversion of the City of South Boston to town status in Halifax County.

Persons desiring to participate in the Commission's oral presentations and requiring special accommodations or interpreter services should contact the Commission's offices at (804) 786-6508 or (804) 786-1860 TDD ☎ by May 23, 1991.

Contact: Barbara W. Bingham, Administrative Assistant, 702 Eighth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Board of Visitors

July 28, 1991 - 4 p.m. – Open Meeting
July 29, 1991 - 9 a.m. – Open Meeting
Longwood College, Ruffner Building, Virginia/Prince Edward Rooms, Farmville, Virginia. ♿

Committee meetings (Finance Committee and Facilities Committee). Meeting of full board to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, Farmville, VA 23209, telephone (804) 395-2001.

STATE LOTTERY BOARD

† **July 22, 1991 - 10 a.m.** – Open Meeting
State Lottery Department, Conference Room, 2201 West Broad Street, Richmond, Virginia. ♿

The board will hold its regular monthly meeting. Business will be conducted according to items listed on the 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.

STATE LAND EVALUATION ADVISORY COUNCIL

† **August 23, 1991 - 10 a.m.** – Open Meeting
† **September 9, 1991 - 10 a.m.** – Open Meeting
Department of Taxation, 2220 West Broad Street, Richmond, Virginia. ♿

The council will meet to adopt suggested ranges of values for agricultural, horticultural, forest and open space land use and the use value assessment program.

Contact: David E. Jordan, Assistant Division Director, Virginia Department of Taxation, Property Tax Division, P.O. Box 1-K, Richmond, VA 23201, telephone (804) 367-8020.

MARINE RESOURCES COMMISSION

† **July 23, 1991 - 9:30 a.m.** – Open Meeting
† **August 27, 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 and 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 or (804) 247-2292/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

July 19, 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 460-03-3.1102. Case Management for Mental Retardation Waiver Clients.** This action proposes to regulate the provision of case management services to mentally retarded persons who are receiving community based services.

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

Written comments may be submitted until July 19, 1991, to Ann Cook, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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August 2, 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: **State Plan for Medical Assistance Relating to Estimated Acquisition Costs Pharmacy Reimbursement Methodology. VR 460-02-4.1920. Methods and Standards for Establishing Payments Rates–Other Types of Care** This regulation will supersede the existing emergency regulation relating to estimated acquisition cost pharmacy reimbursement methodology.

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

Written comments may be submitted until August 2, 1991, to Betty Cochran, Director, Division of Quality Care Assurance, 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.

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August 2, 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: **State Plan for Medical Assistance Relating to Enrollment of Psychologists Clinical. VR 460-03-3.1100. Amount, Duration, and Scope of Services.** This amendment proposes granting psychologists licensed by the Board of Psychology as psychologists clinical and eligible to enroll in the Virginia Medicaid Program as providers of Medicaid covered services.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Written comments may be submitted until August 2, 1991, to C. M. 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.

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August 2, 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 460-03-4.1921. Methods and Standards for Other Types of Services: Obstetric and Pediatric Payments.** This proposed regulation promulgates specific obstetric and pediatric maximum payment rates to become effective October 1, 1991.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Written comments may be submitted until August 2, 1991, to C. M. 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.

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August 16, 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 adopt regulations entitled: **VR 460-04-8.12. Home and Community Based Services for Individuals with Mental Retardation.** The purpose of this proposal is to promulgate permanent regulations for the provision of home and community-based services for persons with mental retardation, to supersede the temporary emergency regulation which became effective on December 20, 1990.

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

Written comments may be submitted until 4:30 p.m., August 16, 1991, to Chris Pruett, Division of QCA, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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† **September 13, 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 460-04-29, 460-01-29.1, 460-01-31.1, 460-02-3.2100, and 460-03-4.1922. Coordination of Title XIX with Part A and Part B of Title XVIII.** The purpose of the proposed action is to limit the payment of coinsurance amount by Medicaid so that the combined payments of Medicare Part B and Medicaid would not exceed the Medicaid allowance for a particular procedure.

STATEMENT

Basis and Authority: Section 32.1-324 of the Code of Virginia 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 Social Security Act § 1902(n) allows the payment for eligible individuals at the Medicaid maximum rate rather than the Medicare maximum payment.

Purpose: The purpose of this proposal is to promulgate permanent regulations, which are needed to supersede the current emergency regulations, that limit the payment of the coinsurance amount by Medicaid, if Medicaid makes any payment, so that the combined payments of Medicare Part B and Medicaid would not exceed the Medicaid allowance for a particular procedure.

Summary and Analysis: This proposed regulation affects three preprinted pages in the State Plan for Medical Assistance, as well as Attachments 3.2 A (Coordination of Title XIX with Part A and Part B of Title XVIII; 4.19 B, Methods and Standards for Establishing Payment Rates - Other Than Types of Care); and 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates - Other Types of Care.

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. The regulatory action promulgates the permanent rules needed to implement this policy.

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 77,625 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.

Statutory Authority: § 32.1-324 of the Code of Virginia.

Written comments may be submitted until September 13, 1991, to C.M. Brankley, Director, Division of Client Services, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

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† **September 13, 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: **State Plan for Medical Assistance Relating to Home Health Services. VR 460-03-3.1100. Amount, Duration and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care.** The purpose of the proposed action is to promulgate permanents regulation to control the use of home health services.

STATEMENT

Basis and Authority: Section 32.1-324 of the Code of Virginia 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 promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews. Subsequent to an emergency adoption action, this agency is initiating the public notice and comment process 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.

Purpose: The purpose of this proposal is to promulgate permanent regulations providing for the authorization and utilization review (UR) of home health services to supersede the current emergency regulations which became effective January 1, 1991.

Summary and Analysis: 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). The Durable Medical Equipment (DME) and Supplies Listing that was placed in Supplement 4 of Attachment 3.1 A & B of the emergency regulation has been removed from the proposed regulation at the request of the Health Care Financing Administration. The DME listing is found in the provider manuals for rehabilitative services, DME, home health, and local health departments and will be periodically updated. In addition, the proposed regulations are more specific regarding noncovered items than the emergency regulations.

Home health services are provided by certified home health agencies on a part-time or intermittent basis to home-bound recipients in their residences other thar 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 provide

enrollment. 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.

Predetermined limits, based upon the Health Care Financing Administration Common Procedure Coding System (HCPCS), have been determined for durable medical equipment and supplies. If extended use of the equipment and/or supplies is required, then the provider must request additional equipment or supplies from DMAS. Payment will 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 is a 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 is a visit to perform or teach a specific task and/or monitor compliance

(3) Intensive/extended visit is a 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 is a visit to conduct a comprehensive assessment of patient's rehabilitative needs and to develop a rehabilitative plan of care.

(2) Routine follow-up visit is a 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.

Impact: Moneys 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 as a result of this utilization review.

FTEs required for the authorization and utilization review process will be reassigned from within the existing agency structure.

Forms: Two new forms are required to implement this proposed regulation. The "Request for Authorization for Extended Home Health Services" (DMAS-450) is used by providers to request home health services beyond the preauthorized limits described in the proposed rule. The DME (Durable Medical Equipment) and Supplies Authorization (DMAS-440) is used by providers to request DME and supplies that exceed the limits described in the DME listing for either quantity or frequency. The DME listing is found in the provider manuals for rehabilitative services, DME, home health, and local health departments. Items not identified on the DME listing must be submitted for individual consideration.

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

Written comments may be submitted until September 13, 1991, to Mary Chiles, Manager, Division of Quality Care Assurance, DMAS, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-7933.

BOARD OF MEDICINE

† **September 13, 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 Medicine intends to amend regulations entitled: **VR 465-09-01. Certification for Optometrists to Prescribe for and Treat Certain Diseases Including Abnormal Conditions of the Human Eye and Its Adnexa with Certain Therapeutic Pharmaceutical Agents.** These amendments replace emergency regulations in §§ 2.1-(3) and 6.1 of the regulations to provide alternate pathways for graduates of optometric training programs to be eligible to sit for the certification exam to treat ocular diseases with therapeutic pharmaceutical agents.

STATEMENT

Purpose: To enact permanent regulations to replace the emergency amendments effective May 3, 1991, which provide the board with appropriate authority to approve alternate educational pathways for doctors of optometry to be eligible to sit for the certification examination. The proposed amendments will ease the regulatory burden for doctors of optometry who can document graduate optometric training which includes elements equivalent to the required postgraduate optometric training established by the board to treat certain diseases, including abnormal conditions of the human eye and its adnexa, with certain therapeutic pharmaceutical agents.

Estimated Entities and Impact:

Regulated Entities: There are 1,200 doctors of optometry licensed to practice in Virginia.

Expected Costs to the Agency: The board anticipates a minimal increase of $2,000 for test administration, proctors, and examination facilities to accommodate the new optometric graduates who will be eligible to sit for the certification examination following licensure by the Board of Optometry.

Source of Funds: All funds of the board are derived from fees paid by licensees and applicants for licensure and certification.

Explanation of Need of Proposed Amendments: The proposed regulations were first published as emergency regulations effective May 3, 1991, to provide relief to those graduates of optometric graduate training leading to a degree for doctor of optometry. The amendments will allow the new graduates to be eligible for certification upon evidence of licensure by the Board of Optometry to practice in Virginia and certification to use diagnostic pharmaceutical agents. The proposed amendments will reduce the regulatory burden for 125 new graduates of optometric training each year. The amendments were based upon responses and evidence of study by the colleges of graduate optometric training.

Impact: It is estimated that most of the currently licensed optometrists who are licensed to practice optometry meet the definition of "small business." The cost of certification and renewal of certification may differentially affect optometrists who operate small businesses and those whose enterprise exceeds the definition of small business. However, the increase of approved programs will allow the new graduates to seek certification and participate in the expanded scope of practice in patient services thereby

providing a more favorable financial impact. Moreover, the costs related to certification are avoidable, as it is not required for the general practice of optometry. Only those optometrists who elect to qualify for the special certification will be affected by a more favorable financial return and increased scope of practice.

Alternatives Considered: The alternatives considered were the many postgraduate and graduate optometric training programs developed by schools of optometry. Each program was evaluated for its equivalency to the postgraduate program approved by the board. The board believes that the additional training approved will ease the burden for the applicants and will continue the assurance to protect the public that the applicants possess the minimum competency to treat the human eye with certain therapeutic pharmaceutical agents.

Statutory Authority: §§ 54.1-2400, 54.1-2957.1, and 54.1-2957.2 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9925.

Executive Committee

August 2, 1991 - 9 a.m. – Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia.

An open session to review closed cases, cases/files requiring administrative action, and consider any other items which may come before the committee. The committee will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

Informal Conference Committee

July 26, 1991 - 10 a.m. – Open Meeting
August 6, 1991 - 9 a.m. – Open Meeting
Sheraton-Fredericksburg Resort and Conference Center, I-95 & Route 3, Fredericksburg, Virginia.

† **August 16, 1991 - 9 a.m.** – Open Meeting
Roanoke Airport Marriott, 2801 Hershberger Road, N.W., Roanoke, Virginia.

The Informal Conference Committee will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen D. Waldron, Deputy Executive Director, Disc., 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9908 or (804) 662-9943/TDD

Legislative Committee

August 2, 1991 - 1 p.m. – Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia.

A meeting to review the proposed amendments to the Code of Virginia relating to the method of conduct for formal evidentiary hearings and develop recommendations to the full board. The committee will review other business which may come before it. The committee will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

Advisory Committee on Optometry

† **September 13, 1991 - 10 a.m.** – Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia.

The committee will meet to review public written comments received on the Optometry Regulations VR 465-09-01, Certification for Optometrists to prescribe for and treat certain diseases or abnormal conditions of the human eye and its adnexa with certain therapeutic pharmaceutical agents. The committee will propose recommendations for presentation to the full board. Public comments will not be received.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

Advisory Board on Physical Therapy

August 23, 1991 - 9 a.m. – Open Meeting
† **September 6, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, Board Room 2, 1601 Rolling Hills Drive, Richmond, Virginia.

A meeting to review and discuss regulations, bylaws, procedural manuals, and to receive reports and other items which may come before the advisory board. The advisory board will not receive public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925.

Advisory Committee on Physician's Assistants

† **August 23, 1991 - 9 a.m.** – Open Meeting
Department of Health Professions, Board Room 1, 1601 Rolling Hills Drive, Richmond, Virginia.

The committee will review and prepare recommendations to the board on proposed amendments to regulations VR 465-05-01. The committee will not entertain public comments.

Contact: Eugenia K. Dorson, Deputy Executive Director, 1601 Rolling Hills Drive, Richmond, VA 23229, telephone (804) 662-9925

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

July 30, 1991 - 6 p.m. – Open Meeting
July 31, 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 July 24. The agenda may be obtained by calling Jane Helfrich.

Tuesday: Informal Session - 6 p.m.

Wednesday: Committee Meetings - 8:45 a.m.
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.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

July 19, 1991 - 9 a.m. – Open Meeting
Omni-Charlottesville, 235 West Main Street, Charlottesville, 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, DMHMRSAS, Office of Human Rights, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-3988.

Substance Abuse Advisory Council

July 18, 1991 - 10 a.m. – Open Meeting
James Madison Building, 13th Floor Board Room, 109 Governor Street, Richmond, Virginia. & (Interpreter for deaf provided upon request)

The advisory council will discuss issues related to the planning and delivery of substance abuse services in Virginia.

Contact: Wayne Thacker, Office of Substance Abuse Services, Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, Richmond, VA 23219, telephone (804) 786-3906 or (804) 786-2991/TDD ☎

MIDDLE VIRGINIA BOARD OF DIRECTORS AND THE MIDDLE VIRGINIA COMMUNITY CORRECTIONS RESOURCES BOARD

August 1, 1991 - 7 p.m. – Open Meeting
502 South Main Street, No. 4, Culpeper, Virginia.

From 7 p.m. until 7:30 p.m. the Board of Directors will hold a business meeting to discuss DOC contract, budget, and other related business. Then the CCRB will meet to review cases before for eligibility to participate with the program. It will review the previous month's operation (budget and program related business).

Contact: Lisa Ann Peacock, Program Director, 502 S. Main St., No. 4, Culpeper, VA 22701, telephone (703) 825-4562.

STATE MILK COMMISSION

† **July 17, 1991 - 10 a.m.** – Open Meeting
Ninth Street Office Building, Room 1015, Richmond, Virginia. &

A routine meeting.

† **July 17, 1991 - 11 a.m.** – Public Hearing
State Capitol, House Room 1, Capitol Square, Richmond, Virginia. &

A public hearing to receive evidence and testimony relative to adjusting all class I prices by amending Regulation No. 8 of the current rules and regulations or by amending Milk Commission Order No. 19, adopted on December 5, 1990, with amendments effective April 1, 1991.

Contact: Mr. C.H. Coleman, Administrator, 200-202 N. Ninth St., 1015 Ninth Street Office Bldg., Richmond, VA 23219, telephone (804) 786-2013/TDD ☎

DEPARTMENT OF MINES, MINERALS AND ENERGY

† **September 13, 1991 - 10 a.m.** – Public Hearing
Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, 622 Powell Avenue, AML Conference Room, Big Stone Gap, 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 480-03-19. Virginia Coal Surface Mining**

Reclamation Regulations. This action amends standards for protection of historic, fish, and wildlife resources; administrative procedures to reinstate individuals who have forfeited bond; appeals of the director's decisions; review of lands unsuitable petitions and notification of bond release.

STATEMENT

Purpose: The purpose of these amendments it to maintain the department's Coal Surface Mining and Reclamation Regulations' requirements consistent with changes in the corresponding federal rules promulgated under the authority of the Surface Mining Control and Reclamation Act of 1977 (PL 95-87). Procedures are established for certain administrative actions so that persons affected by those requirements will be better able to comply with the standards. Clarification of the rules and nonsubstantive grammatical changes are also made.

Substance: The substance of the amendments is maintenance of the department's coal surface mining reclamation requirements consistent with recent changes to the corresponding federal rules promulgated pursuant to the Surface Mining Control and Reclamation Act of 1977 (PL 95-87). This consistency allows the department the authority to administer the requirements of the Surface Mining Act in Virginia.

Issues: The issues raised in connection with these amendments involve the need for additional protection of historic and fish and wildlife resources, and fragile and historic lands; clarification of the administrative procedures to reinstate individuals who have forfeited performance bonds; assessing civil penalties against persons who control mining operations that are in violation of the reclamation program; the feasibility of implementing standards that may vary from corresponding federal rules; and the economic impacts of the amendments on the coal industry.

Impact: The federal Office of Surface Mining notified the department of the need for these changes, so that Virginia's Coal Surface Mining Reclamation program remains consistent with and as effective as the corresponding federal rules.

Several of the amendments offer the public improved opportunity to participate in the operation of the department's reclamation program. Opportunity for improved public participation exists in the appeal process for decisions of the director; streamlining the review of petitions to designate an area unsuitable for mining; and notification to local governments of bond release actions. Changes provide additional protection to environmental and other resources, including fish and wildlife resources, historic resources, and fragile and historic lands.

One set of amendments clarifies existing administrative procedures for bond forfeiture reinstatement; assessing individual civil penalties; inspecting abandoned sites; preparing subsidence control plans; and the contents and procedures for permit plans and permit decisions.

Changes in the tree stocking rate for forestry reflects recent research and reduces the number of trees required to be planted by mine operators and the number of trees lost to early mortality.

Other changes are nonsubstantive, such as removal of the rules for the repealed two-acre exemption and corrections in grammar.

Statutory Authority: §§ 45.1-3.4 and 45.1-230 of the Code of Virginia.

Written comments may be submitted until September 13, 1991.

Contact: Bill Edwards, Policy Analyst, Department of Mines, Minerals and Energy, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-0330 or toll-free 1-800-552-3831.

Virginia Gas and Oil Board

July 16, 1991 - 9 a.m. – Open Meeting
Southwest Virginia 4-H Center, Dickenson Conference Center, Route 609, Hillman Highway, Abingdon, Virginia.

A regularly scheduled meeting.

Contact: B. Thomas Fulmer, Virginia Gas and Oil Inspector, Department of Mines, Minerals and Energy, Division of Gas and Oil, P.O. Box 1416, 230 Charwood Drive, Abingdon, VA 24210, telephone (703) 628-8115, SCATS 676-5501 or 1-800-552-3831/TDD

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July 16, 1991 - 9 a.m. – Public Hearing
Southwest Virginia 4-H Center, Dickenson, Conference Center, Route 609, Hillman Highway, Abingdon, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Gas and Oil Board intends to adopt regulations entitled: **VR 480-05-22.2. Virginia Gas and Oil Board Regulations.** The proposed regulations will govern conservation of gas and oil resources and protection of correlative rights of gas and oil owners.

Statutory Authority: § 45.1-361.15 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: B. Thomas Fulmer, Virginia 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 1-800-552-3831/TDD

VIRGINIA MUSEUM OF NATURAL HISTORY

Board of Trustees

July 27, 1991 - 9 a.m. – Open Meeting
Holiday Inn, 1424 North Main Street, Marion, Virginia

The meeting will include reports from the executive, finance, education and exhibits, marketing, personnel, planning/facilities, and research and collections committees.

Public comment will be received following approval of the minutes of the April meeting.

Contact: Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Avenue, Martinsville, Virginia 24113, telephone (703) 666-8616, SCATS 857-6950, SCATS 857-6951 or (703) 666-8638/TDD ☎

BOARD OF NURSING

July 29, 1991 - 8:30 a.m. – Open Meeting
July 30, 1991 - 8:30 a.m. – Open Meeting
Department of Health Professions, Conference Room 1, 1601 Rolling Hills Drive, Richmond, Virginia. ♿
(Interpreter for deaf provided upon request)

A regular meeting to consider matters related to nursing education programs, discipline of licensees, licensure 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, July 29, 1991.

Contact: Corinne F. Dorsey, R.N. Executive Director, 1601 Rolling Hills Drive, Richmond, Virginia 23229, telephone (804) 662-9909, toll-free 1-800-533-1560 or (804) 662-7197/TDD ☎

TASK FORCE TO STUDY NURSE MIDWIVES AND OBSTETRIC CARE

† **August 19, 1991 - 10 a.m.** – Open Meeting
General Assembly Building, 4th Floor West Conference Room, 910 Capitol Street, Richmond, Virginia. ♿

† **August 19, 1991 - 1:30 p.m.** – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia. ♿

Task Force will meet to continue its study of providers of obstetric care, pursuant to House Joint Resolution 431.

At 1:30 p.m. the Task Force will conduct an informational public hearing in House Room C. Comment is requested related to methods of promoting and encouraging family physicians and obstetricians to continue or resume delivering babies, to examine the potential for expanding nurse midwife practice and recommendations for collaboration by these providers to respond to identified needs in the Commonwealth.

Contact: Corinne F. Dorsey, R.N., Executive Director, 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

† **August 6, 1991 - 9 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, Richmond, Virginia. ♿

An open meeting to (i) review applications; (ii) sign certificates, and (iii) discuss other matters which require board action.

Contact: Mr. Geralde W. Morgan, Administrator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF OPTOMETRY

July 17, 1991 - 8 a.m. – Open Meeting
Police Academy Headquarters, 7700 Midlothian Turnpike, Richmond, Virginia.

Administration of Optometry State Board Examination and the Diagnostic Pharmaceutical Agents Examination.

Contact: Lisa J. Russell, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9942.

July 18, 1991 - 9 a.m. – Open Meeting
Department of Health Professions, 1601 Rolling Hills Dr., Conference Room 1, Richmond, Virginia.

Optometry board meeting and public hearing for proposed optometry regulations. Public hearing scheduled to begin at 10 a.m.

Contact: Lisa J. Russell, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229-5005, telephone (804) 662-9942.

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July 18, 1991 - 10 a.m. – Public Hearing
1601 Rolling Hills Dr., Conference Room 1, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Optometry intends to amend regulations entitled: **VR 510-01-1.**

Regulations of the Virginia Board of Optometry. The purpose of this action is to amend the regulations for purpose of fee changes, clarification of licensing, examinations, renewal, reinstatement procedures, clarification of unprofessional conduct, and continuing education requirements.

Statutory Authority: § 54.1-2400 and Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia.

Written comments may be submitted until July 18, 1991.

Contact: Lisa J. Russell, Executive Director, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9915 or SCATS (804) 662-9910.

VIRGINIA PEANUT BOARD

† **July 18, 1991 - 11 a.m.** – Open Meeting
Extension Office, Highway 35, Courtland, Virginia. &

The board will conduct a general business meeting, elect a chairman and a secretary, and discuss the 1991-92 budget.

Contact: Russell C. Schools, P.O. Box 149, Capron, VA 23829, telephone (804) 658-4573.

BOARD OF PHARMACY

† **July 24, 1991 - 10 a.m.** – Open Meeting
Koger Center-West, Culpeper Building, Conference Room, 1606 Santa Rosa Road, Richmond, Virginia.

The board will meet to review its budget. It will receive public comments at the beginning of the meeting or at any appropriate occasion during the meeting.

Contact: Connie T. Tate, Executive Secretary, Virginia Board of Pharmacy, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9911.

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

August 7, 1991 - 10 a.m. – Open Meeting
August 8, 1991 - 10 a.m. – Open Meeting
Fredericksburg-Sheraton, Fredericksburg, Virginia.

Detailed agendas will be available at the committee meeting. If you would like to know more about a particular meeting you can call (804) 371-4950 for a recorded message about committee meeting agendas.

Contact: Katherine L. Imhoff, Executive Director, Commission on Population Growth and Development, General Assembly Bldg., Suite 519-B, 910 Capitol St., Richmond, VA 23219, telephone (804) 371-4949.

VIRGINIA PORK INDUSTRY BOARD

† **July 26, 1991 - 3:30 p.m.** – Open Meeting
Chamberlin Hotel (Monitor Room), Old Point Comfort, Hampton, Virginia.

The board will be welcoming new board member(s), saying farewell to departing member(s), electing new officers, approving projects and formulating its annual budget.

Contact: John H. Parker, Program Director, 1100 Bank St., Washington Bldg., Richmond, VA 23219, telephone (804) 786-7092.

PRIVATE SECURITY SERVICES ADVISORY BOARD

† **July 31, 1991 - 10 a.m.** – Open Meeting
Holiday Inn, Lynchburg, Virginia. &

The committee will hold a general business meeting.

Contact: Paula J. Scott, Staff Executive, Departmentof Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-4000.

BOARD OF PROFESSIONAL COUNSELORS

† **July 15, 1991 - 10 a.m.** – Open Meeting
9504-A Lee Highway, Fairfax, Virginia.

The Examination Committee will meet.

Contact: Evelyn B. Brown, Executive Director or Joyce D. Williams, Administrative Assistant, Department of Health Professions, 1601 Rolling Hills Dr., Richmond, VA 23229, telephone (804) 662-9912.

BOARD OF PSYCHOLOGY

† **July 26, 1991 - 3 p.m.** – Open Meeting
Department of Health Professions, 1601 Rolling Hills Drive, Richmond, Virginia.

A meeting to conduct general board business, certify oral examination results, continue regulatory review, and elect officers. Public comment will not be received.

Written comments may be submitted until July 8, 1991, for distribution.

Contact: Evelyn B. Brown, Executive Director, 1601 Rolling Hills Dr., Suite 200, Richmond, VA 23229-5005, telephone (804) 662-9913 or (804) 662-7197/TDD ☎

REAL ESTATE APPRAISER BOARD

† **September 16, 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 Real Estate Appraiser Board intends to adopt regulatins entitled: **VR 583-01-01. Real Estate Appraiser Board Public Participation Guidelines.** The proposed regulation outlines the procedures for solicitation of input from interested parties in the formation and development of Appraiser Board Regulations.

STATEMENT

Basis, Purpose, Substance, Issues and Impact: Pursuant to § 54.1-2013 of the Code of Virginia, the Real Estate Appraiser Board submits proposed regulations outlining procedures for the solicitation of written input from interested parties in the formation and development of its regulations. Emergency Public Participation Guidelines will remain in effect only until October 31, 1991, so the promulgation of final Public Participation Guidelines is essential.

These guidelines require the board to maintain a mailing list of persons and organizations who will be mailed documents in reference to the development of regulations. The regulations also specify procedures for additions or deletions to the mailing list. A summary of each of the documents to be distributed to persons on the mailing list is also included. The regulations allow the appointment of advisory committees of the board to provide for adequate citizen participation in the formation, promulgation, adoption and review of regulations.

Approximately 250 persons and organizations are included on the board's existing Public Participation Guidelines mailing list. The board anticipates issuing a majority of the projected 4,000 Virginia appraiser licenses by January, 1992, in compliance with the requirements of the federal law (Title 11 of the Federal Financial Institutions Reform Recovery and Enforcement Act of 1989) which mandated this state regulatory program.

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Written comments may be submitted until September 16, 1991.

Contact: Demetra Y. Kontos, Assistant Director, Real Estate Appraiser Board, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-2175.

REAL ESTATE BOARD

July 17, 1991 - 1 p.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 Real Estate Board intends to adopt regulations entitled: **VR 585-01-05. Real Estate Board Fair Housing Regulations.** The board proposes to promulgate fair housing regulations in support of the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia effective July 1, 1991.

Statutory Authority: §§ 36-94(d) and 36-96.20(C) of the Code of Virginia.

Written comments may be submitted until August 16, 1991.

Contact: Susan Scovill, Fair Housing Administrator, Department of Commerce, 3600 W. Broad St., 5th Floor, Richmond, VA 23230, telephone (804) 367-8530

July 26, 1991 - 10 a.m. – Open Meeting
Marine Resources Commission, Sovran Bank Building, 2600 Washington Avenue, Fourth Floor, Library, Newport News, Virginia.

The Real Estate Board will meet to conduct a formal hearing: File Number 90-01190, Real Estate Board v. Carrithers, Paul N.

July 26, 1991 - 2 p.m. – Open Meeting
Marine Resources Commission, Sovran Bank Building, 2600 Washington Avenue, Fourth Floor, Library, Newport News, Virginia.

The Real Estate Board will meet to conduct a formal hearing: File Number 90-00154, Real Estate Board v. McCadden, George, Jr.

† **August 7, 1991 - 9:30 a.m.** – Open Meeting
Department of Commerce, 3600 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

The board will meet to conduct a formal hearing: File Number 90-01504, Real Estate Board v. Rosenbaum, Henry S.

† **August 8, 1991 - 10 a.m.** – Open Meeting
Norfolk Port and Industrial Authority, Conference Room B, Norfolk International Airport, Norfolk, Virginia.

The board will meet to conduct a formal hearing: File Numbers 88-00795 and 86-01498, Real Estate Board v. Leneski, Donald t/a Military Services Realty, Inc.

† **August 8, 1991 - 10 a.m.** – Open Meeting
Tysons Corner Marriot, McLean Room, 8028 Leesburg Pike, Vienna, Virginia.

The board will meet to conduct a formal hearing: File Number 90-00620, Real Estate Board v. Roy W. Rudolph.

Contact: Gayle Eubank, Hearings Coordinator, Department of Commerce, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

BOARD OF REHABILITATIVE SERVICES

† **July 25, 1991 - 10 a.m.** – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The board will receive department reports, consider regulatory matters and conduct the regular business of the board.

Finance Committee

† **July 25, 1991 - 8:30 a.m.** – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

The committee will review monthly financial reports and budgetary projections.

Legislation and Evaluation Committee

† **July 25, 1991 - 8:30 a.m.** – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Legislative update.

Program Committee

† **July 24, 1991 - 4 p.m.** – Open Meeting
4901 Fitzhugh Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Special program services presentation.

Contact: Susan L. Urofsky, Comissioner, 4901 Fitzhugh Ave., Richmond, VA 23230, telephone (804) 367-0319, toll-free 1-800-552-5019/TDD ☎ or (804) 367-0280/TDD ☎

BOARD OF SOCIAL SERVICES

† **July 17, 1991 - 2 p.m.** – Open Meeting
† **July 18, 1991 - 9 a.m.** – (If necessary)
Department of Social Services, 8007 Discovery Drive, Richmond, Virginia. ♿

The board will hold a work session and formal business meeting.

Contact: Phyllis Sisk, Administrative Staff Specialist, Department of Social Services, 8007 Discovery Dr., Richmond, VA 23229, telephone (804) 662-9236, 1-800-552-3431 or 1-800-552-7096/TDD ☎

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

July 18, 1991 - 10 a.m. – Public Hearing
Wythe Building, Conference Room A, 1604 Santa Rosa Road, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Services intends to amend regulations entitled: **VR 615-08-01. Virginia Energy Assistance Program.** The proposed amendments to the Fuel Assistance Component will (i) ensure that all eligible individuals who apply for Fuel Assistance during the application period will receive a benefit; (ii) ensure compliance with Public Law 97-35 relative to providing the highest benefit to those with the lowest income and the highest energy costs.

The proposed amendments to the Crisis Assistance component will assist in meeting the needs of needy households, who, due to unforeseen changes in circumstances, find themselves in a heating emergency situation during January, February or March.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until July 19, 1991, to Charlene H. Chapman, Department of Social Services, 8007 Discovery Drive, Richmond, Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Bureau of Governmental Affairs, 8007 Discovery Dr., Richmond, VA 23229-8699, telephone (804) 662-9217.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

† **July 15, 1991 - 11 a.m.** – Open Meeting
Department of Commerce, Conference Room 1, 3600 West Broad Street, Richmond, Virginia. ♿

The board will conduct its general business meeting.

Contact: Nelle P. Hotchkiss, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595.

GOVERNOR'S TASK FORCE ON SUBSTANCE ABUSE AND SEXUAL ASSAULT ON COLLEGE CAMPUSES

† **July 24, 1991 - 9 a.m.** – Open Meeting
Monroe Building, 101 North 14th Street, Conference Room E, Richmond, Virginia. ♿

Full commission meeting.

Contact: Kris Ragan, Staff Assistant, P.O. Box 1422, Richmond, VA 23211, telephone (804) 786-6316.

DEPARTMENT OF TRANSPORTATION

July 18, 1991 - 7 p.m. – Public Hearing
Abingdon High School Auditorium, 705 Thompson Drive, Abingdon, Virginia.

July 24, 1991 - 7 p.m. – Public Hearing
Virginia Department of Transportation, Auditorium, 731 Harrison Avenue, Salem, Virginia.

July 25, 1991 - 7 p.m. – Public Hearing
George Mason University, 4400 University Drive, Student Union II - Ballroom, Fairfax, Virginia.

A public meeting is being held to obtain comments from Virginia residents, business leaders, and state and local officials on the Virginia Department of Transportation's study of the Allocation Formula for the Transportation Trust Fund as mandated by the 1991 General Assembly. The study has three major goals: (i) to consider whether the way funds are currently allocated in the Code are equitable, (ii) to consider the changing roles of state, local, and federal governments in funding transportation needs; and (iii) to consider the special needs of freight and passenger rail.

† **July 31, 1991 - 7 p.m.** – Public Hearing
Virginia Department of Transportation, Auditorium, 1221 East Broad Street, Richmond, Virginia. ♿

A public meeting is being held to obtain comments from Virginia residents, business leaders, and state and local officials on the Virginia Department of Transportation's continued study of issues relating to the cost responsibility of vehicles using Virginia's roads. The study, mandated by Senate Joint Resolution (SJR) 238, requires the department to consider pavement deterioration models for the allocation of rehabilitation (3R) money and to develop a data collection plan for the periodic performance of cost responsibility studies. In addition, analysis of tax and fee increases and their potential effect on the industry will be included in the study.

Contact: Mary Lynn Tischer, Ph.D., 1401 E. Broad St., Room 403, Richmond, VA 23219, telephone (804) 225-4698.

COMMONWEALTH TRANSPORTATION BOARD

July 17, 1991 - 2 p.m. – Open Meeting
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ♿

August 14, 1991 - 2 p.m. – Open Meeting
Ramada Towers, 57th & Oceanfront, Virginia Beach, Virginia. ♿

A joint work session of the Commonwealth Transportation Board and the Department of Transportation staff.

July 18, 1991 - 2 p.m. – Open Meeting
Virginia Department of Transportation, Board Room, 1401 East Broad Street, Richmond, Virginia. ♿

August 15, 1991 - 10 a.m. – Open Meeting
Ramada Towers, 57th & Oceanfront, Virginia Beach, Virginia. ♿

Monthly meeting of the Commonwealth Transportation Board 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.

TRANSPORTATION SAFETY BOARD

August 16, 1991 - 10 a.m. – Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia. ♿

A meeting to discuss several topics which pertain to transportation safety.

Contact: W. H. Leighty, Deputy Commissioner for Transportation Safety, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23219-0001, telephone (804) 367-6614 or (804) 367-1752/TDD ☎

TREASURY BOARD

July 17, 1991 - 9 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ♿

A regular meeting.

Contact: Laura Wagner-Lockwood, Senior Debt Manager, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-4931.

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

July 19, 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 Treasury Board intends to amend regulations entitled: **VR 640-02. Security for Public Deposits Act Regulations.** The purpose of the proposed amendments is to provide adequate protection for public funds on deposit in financial institutions in light of recent changes within financial institutions and in types of securities pledged.

Statutory Authority: § 2.1-364 of the Code of Virginia.

Written comments may be submitted until July 19, 1991.

Contact: Susan F. Dewey, Director of Financial Policy, Department of the Treasury, P.O. Box 6-H, Richmond, VA 23215, telephone (804) 225-2142.

VIRGINIA RACING COMMISSION

July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-03-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Stewards.** The purpose of the proposed amendments is to establish the duties, responsibilities and powers of stewards.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-03-04. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Commission Veterinarian.** The regulation establishes the duties and responsibilities of the Commission Veterinarian.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-03-05. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Formal Hearings.** The regulation establishes the procedure for appealing decisions of the stewards.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-04-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Horses.** The regulation establishes conditions under which horses may be identified, determined eligible for racing and may be barred from racing.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-04-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Entries.** The purpose of the proposed amendments is to establish procedures and conditions under which entries will be taken for horse races with pari-mutuel wagering.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until June 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208,

telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-05-01. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Flat Racing.** The regulation establishes the conditions under which flat racing will be conducted.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-05-03. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Jump Racing.** The regulation establishes the conditions under which jump racing will be conducted.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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July 22, 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 Virginia Racing Commission intends to adopt regulations entitled: **VR 662-05-04. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering - Conduct of Quarter Horse Racing.** This regulation establishes the conditions under which quarter horse racing will be conducted.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Written comments may be submitted until July 22, 1991.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

† **July 24, 1991 - 9:30 a.m.** – Open Meeting
VSRS Building, 1200 East Main Street, Richmond, Virginia. ♿

The commission will hold its regular business meeting including consideration of proposed regulations pertaining to stewards; commission veterinarian; formal hearings; horses; conduct of flat, jump and quarter horse racing; and entries.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VIRGINIA RESOURCES AUTHORITY

August 13, 1991 - 10 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 707, Conference Room A, Richmond, Virginia.

The board will meet to (i) approve minutes of the meeting of July 9, 1991; (ii) review the authority's operations for the prior months; and (iii) consider other matters and take other actions as they may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., Mutual Building, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX Number (804) 644-3109.

BOARD FOR THE VISUALLY HANDICAPPED

† **July 25, 1991 - 1:30 p.m.** – Open Meeting
397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

A quarterly meeting to review policy and procedures of the Virginia Department for the Visually Handicapped. The board will review and comment on the department's budget.

Contact: Joseph A. Bowman, Executive Assistant, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140 or 1-800-622-2155/TDD ☎

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

NOTE: CHANGE IN MEETING DATE

July 27, 1991 - 11 a.m. – Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ♿ (Interpreter for deaf provided upon request)

Committee meets quarterly to advise the Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3350, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

† **July 23, 1991 - 2 p.m.** – Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♿

A meeting will be held by the agency representatives that comprise the council. The council is designed to facilitate the timely delivery of appropriate services to handicapped children and youth in Virginia.

Contact: Glen R. Slonneger, Jr., Program and Policy Specialist, Program for Infants, Children, and Youth, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140.

VIRGINIA COUNCIL ON VOCATIONAL EDUCATION

† **August 7, 1991 - 1 p.m.** – Open Meeting
† **August 8, 1991 - 8 a.m.** – Work Session
Holiday Inn Waynesboro-Afton, Jct., Skyline Drive and Blue Ridge Parkway, U.S. 250 and I-64, Waynesboro, Virginia.

The council will conduct its general business session, followed by a work session to plan council activities related to responsibilities in the Carl Perkins Vocational and Applied Technology Education Act.

Contact: George S. Orr, Jr., Executive Director, 7420-A Whitepine Rd., Richmond, VA, telephone (804) 275-6218.

DEPARTMENT OF WASTE MANAGEMENT

July 22, 1991 - 10 a.m. – Public Hearing
The Wagner Building, Multipurpose Room, 9502 Lucy Corr Drive, Chesterfield, Virginia. ♿

July 24, 1991 - 2 p.m. – Public Hearing
Virginia Tech., Litton-Reaves Hall, Room 1870, West Campus Drive at Washington Street, Blacksburg, Virginia. ♿

A public hearing will be held to receive comments on proposed regulation VR 672-50-11. The proposed regulation establishes criteria for the certification of recycling machinery and equipment, as well as the procedure for applying for certification.

This certification would allow the owners of the equipment to apply for personal property tax exemptions as authorized by local ordinances.

Contact: G. Stephen Coe, Equipment Certification Officer, Department of Waste Management, 11th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0044, toll-free 1-800-533-7488 or (804) 374-8737/TDD ☎

† **July 22, 1991 - 11 a.m.** – Public Hearing
The Wagner Building, Multipurpose Room, 9502 Lucy Corr Drive, Chesterfield, Virginia. ♿

† **July 24, 1991 - 3 p.m.** – Public Hearing
Virginia Tech., Litton-Reaves Hall, Room 1870, West Campus Drive at Washington Street, Blacksburg, Virginia. ♿

A public hearing will be held to receive comments on proposed regulation VR 672-20-32. The proposed regulation will replace VR 672-20-31 "Yard Waste Composting Regulation" which is an emergency regulation.

Contact: Michael P. Murphy, Environmental Program Manager, Department of Waste Management, 11th Floor, James Monroe Bldg., 101 N. Fourteenth St., Richmond, VA 23219, telephone (804) 371-0044, 1-800-533-7488, or (804) 371-8737/TDD ☎

DEPARTMENT OF WASTE MANAGEMENT (VIRGINIA WASTE MANAGEMENT BOARD)

† **July 22, 1991 - 11 a.m.** – Public Hearing
The Wagner Building, Multipurpose Room, 9502 Lucy Corr Drive, Chesterfield, Virginia. ♿

† **July 24, 1991 - 3 p.m.** – Public Hearing
Virginia Tech., Litton-Reaves Hall, Room 1870, West Campus Drive at Washington Street, Blacksburg, Virginia. ♿

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to adopt regulations entitled: **VR 672-20-32. Yard Waste Composting Facility Regulation.** This regulation provides for certain exemptions from the permitting requirements for solid waste management facilities 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 the same regulations.

STATEMENT

This regulation is promulgated as authorized by §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

The purpose of this regulation is to replace VR 672-20-31, "Yard Waste Composting Regulation" which is an emergency regulation.

This regulation will establish appropriate standards for siting, design, construction, operation and closure, and expedited approval procedures pertaining to certain yard waste composting facilities.

The proposed regulation creates a permit by rule status for yard waste compost facility operators that demonstrate to the department that their facilities are in compliance with the facility standards set forth in the regulation and, where applicable, they have satisfied the proof of financial responsibility requirements of the "Financial Assurance Regulations for Solid Waste Facilities (VR 672-20-1). The permit by rule procedure is intended to encourage the development of yard waste composting facilities by reducing the review time needed to gain regulatory approval to commence operation and the cost of compliance.

The estimated impact of the regulation is undetermined. The number of yard waste composting facilities that will request a permit by rule status is unknown. The decision to construct and operate a yard waste composting facility is optional. The overall economic impact may be substantial or minimal, and will be dependent upon the features of each proposed facility's site and the ability of each facility operator to market the finished compost.

Statutory Authority: §§ 10.1-1402 and 10.1-1408.1 of the Code of Virginia.

Written comments may be submitted until September 16, 1991.

Contact: Michael P. Murphy, Environmental Program Manager, Department of Waste Management, 11th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0044/TDD ☎ toll-free 1-800-533-7488

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July 22, 1991 - 10 a.m. – Public Hearing
The Wagner Building, 9502 Lucy Corr Drive, Chesterfield, Virginia.

July 24, 1991 - 2 p.m. – Public Hearing
Virginia Tech, Room 1870, Litton-Reaves Hall, West Campus Drive at Washington Street, Blacksburg, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to adopt regulations entitled: **VR 672-50-11. Regulations for the Certification of Recycling Machinery and Equipment for Tax Exemption Purposes.** This regulation establishes criteria for recycling machinery and equipment. The regulation would allow owners of machinery and equipment used primarily to process recyclable material for markets or to incorporate recycled material into a production process to seek a recycling certification for such equipment from the Virginia Department of Waste Management. Once certified, the owner could apply for a local personal property tax exemption offered for such recycling machinery or equipment.

Statutory Authority: §§ 10.1-1411 and 58.1-3661 of the Code of Virginia.

Written comments may be submitted until August 7, 1991, to Equipment Certification Officer, Department of Waste Management, 101 N. 14th St., 11th Floor, Monroe Bldg., Richmond, VA 23219.

Contact: G. Stephen Coe, Equipment Certification Officer, Department of Waste Management, 11th Floor, 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-0044, toll-free 1-800-533-7488 or (804) 374-8737/TDD ☎

VIRGINIA DEPARTMENT OF
YOUTH & FAMILY SERVICES
Youth Begins With You

STATE BOARD OF YOUTH AND FAMILY SERVICES

NOTE: CHANGE IN MEETING DATE
† **July 25, 1991 - 10 a.m.** – Open Meeting
700 Centre Building, 4th Floor, 7th and Franklin Streets, Richmond, Virginia.

† **August 26, 1991 - 10 a.m.** – Open Meeting
Virginia Beach Resort Hotel and Conference Center, 2800 Shore Drive, Virginia Beach, Virginia.

A general business meeting.

Contact: Paul Steiner, Policy Coordinator, Department of Youth and Family Services, 700 Centre, 4th Floor, 7th & Franklin Sts., Richmond, VA 23219, telephone (804) 371-0692.

LEGISLATIVE

LOCAL AND STATE GOVERNMENT INFRASTRUCTURE AND REVENUE RESOURCES COMMISSION

Special Subcommittee

† **August 23, 1991 - 1 p.m.** – Open Meeting
General Assembly Building, 5th Floor West Conference

Room, 910 Capitol Street, Richmond, Virginia.

A special subcommittee of the commission will hold a working session in a continuation of its study of local and state government infrastructure and revenue resources. (HJR 205)

Contact: Bethany Parker, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE EXISTING MECHANICS' LIEN LAWS

† **July 22, 1991 - 1 p.m.** – Open Meeting
General Assembly Building, Sixth Floor Conference Room, 910 Capitol Street, Richmond, Virginia.

The joint subcommittee will hold its initial meeting for the study of existing mechanics' lien laws. (HJR 418)

Contact: Oscar R. Brinson, Staff Counsel, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE ENVIRONMENTAL IMPACT OF OIL AND GAS DRILLING UNDER THE CHESAPEAKE BAY

† **September 19, 1991 - 2 p.m.** – Open Meeting
General Assembly Building, Sixth Floor Conference Room, 910 Capitol Street, Richmond, Virginia.

The joint subcommittee will meet for additional study of the environmental impact of oil and gas drilling under the Chesapeake Bay. (HJR 251)

Contact: Deanna Sampson, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE USE OF VEHICLES POWERED BY CLEAN TRANSPORTATION FUELS

† **July 29, 1991 - 1:30 p.m.** – Open Meeting
State Capitol, House Room 4, Capitol Square, Richmond, Virginia.

The joint subcommittee will meet to continue its study of the use of vehicles powered by clean transportation fuels. (HJR 334)

Contact: Dr. Alan Wambold, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

JOINT SUBCOMMITTEE STUDYING THE WORKER'S COMPENSATION SECOND INJURY FUND

† **August 22, 1991 - 10 a.m.** – Open Meeting
State Capitol, House Room 2, Capitol Square, Richmond, Virginia.

The joint subcommittee will meet for additional study of the worker's compensation second injury fund. (HJR 312).

Contact: Arlen K. Bolstad, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

CHRONOLOGICAL LIST

OPEN MEETINGS

July 15
Accountancy, Board for
Emergency Planning Committee, Local - County of Prince William, City of Manassas, and City of Manassas Park
Emergency Planning Committee, Local - Scott County
† Health Professions, Board of
† - Administration and Budget Committee
† - Committee on Professional Education and Public Affairs
† Professional Counselors, Board of
† Soil Scientists, Board for Professional

July 16
Accountancy, Board for
Gas and Oil Board, Virginia
Health Professions, Board of
† - Compliance and Discipline Committee
† - Executive and Legislation Committee
Housing Development Authority, Virginia

July 17
Community Colleges, State Board for
Contractors, Board for
Corrections, Board of
† Emergency Planning Committee, Local - Roanoke Valley
Emergency Planning Committee, Local - Winchester
Employment Commission, Virginia
- Advisory Board
Health Professions, Board of
- Task Force on Managed Health Care
† Milk Commission, State
Optometry, Board of
† Social Services, Board of
Transportation Board, Commonwealth
Treasury Board

July 18
Agriculture and Consumer Services, Department of

- Pesticide Control Board
Audiology and Speech Pathology, Board of
Community Colleges, State Board for
Compensation Board
† Conservation and Recreation, Department of
† - Virginia Soil and Water Conservation Board
Employment Commission, Virginia
- Advisory Board
Game and Inland Fisheries, Board of
Housing and Community Development, Board of
- Amusement Device Technical Advisory Committee
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- Substance Abuse Advisory Council
Optometry, Board of
† Peanut Board, Virgina
† Social Services, Board of
Transportation Board, Commonwealth

July 19
Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Building Code Technical Review Board, State
Children, Interdepartmental Regulation of Residential Facilities for
- Coordinating Committee
Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
Coordinating Prevention, Virginia Council on
Game and Inland Fisheries, Board of
Mental Health, Mental Retardation and Substance Abuse Services, Department of
- State Human Rights Committee

July 20
Visually Handicapped, Department for the
- Advisory Committee on Services

July 22
Local Government, Commission on
† Lottery Board, State
† Mechanics' Lien Laws, Joint Subcommittee Studying the Existing

July 23
† Agriculture and Consumer Services, Board of
Health Services Cost Review Council, Virginia
Children's Facilities, Interdepartmental Council on Rate-Setting for
Local Government, Commission on
† Marine Resources Commission
Medicine, Board of
- Advisory Committee on Acupuncture
† Visually Handicapped, Department for the
† - Interagency Coordinating Council on Delivery of Related Services to Handicapped Children

July 24
† Chesapeake Bay Local Assistance Board
Corrections, Board of
- Liaison Committee
Emergency Planning Committee, Local - Gloucester
Local Government, Commission on
† Pharmacy, Board of
† Rehabilitative Services, Board of
† - Program Committee
† Substance Abuse and Sexual Assault on College Campuses, Governor's Task Force on
† Virginia Racing Commission

July 25
Education, State Board of
† Rehabilitative Services, Board of
† - Finance Committee
† - Legislation and Evaluation Committee
† Visually Handicapped, Board for the
† Youth and Family Services, State Board of

July 26
† Air Pollution Control Board, State
Education, State Board of
Medicine, Board of
† Pork Industry Board, Virginia
† Psychology, Board of
Real Estate Board

July 27
Museum of Natural History, Virginia
- Board of Trustees
Visually Handicapped, Department for the
- Advisory Committee on Services

July 28
Longwood College
- Board of Visitors

July 29
† Criminal Justice Services, Department of
† - Court Appointed Special Advocate Program Advisory Committee
† Funeral Directors and Embalmers, Board of
Longwood College
- Board of Visitors
Nursing, Board of
† Vehicles Powered by Clean Transportation Fuels, Joint Subcommittee Studying the Use of

July 30
† ASAP Policy Board - Rockbridge
† Funeral Directors and Embalmers, Board of
Labor and Industry, Department of
- Safety and Health Codes Board
† Mental Health, Mental Retardation and Substance Abuse Services Board, State
Nursing, Board of

July 31
† Dentistry, Board of
Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Private Security Services Advisory Board

August 1
† Dentistry, Board of
Middle Virginia Board of Directors and the Middle Virginia Community Corrections Resources Board

August 2
† Dentistry, Board of
Medicine, Board of
- Executive Committee
- Legislative Committee

August 3
† Dentistry, Board of

August 6
Hopewell Industrial Safety Council
Medicine, Board of
† Opticians, Board for

August 7
Child Mental Health, Interagency Consortium on
Population Growth and Development, Commission on
† Real Estate Board
† Vocational Education, Virginia Council on

August 8
Housing and Community Development, Department of
- Regulatory Effectiveness Advisory Committee
Population Growth and Development, Commission on
† Real Estate Board
† Vocational Education, Virginia Council on

August 13
† Auctioneers Board
Virginia Resources Authority

August 14
Education, State Board of
Transportation Board, Commonwealth

August 15
† Geology, Board for
Transportation Board, Commonwealth

August 16
† Geology, Board for
† Medicine, Board of
† - Informal Conference Committee
Transportation Safety Board

August 19
† Emergency Planning Committee, Local - County of Prince William, City of Manassas, and City of Manassas Park
Local Government, Commission on
† Nurse Midwives and Obstetric Care, Task Force to Study
† Oil and Gas Drilling Under the Chesapeake Bay, Joint Subcommittee Studying the Environmental Impact of

August 20
Local Government, Commission on

August 21
† Chesapeake Bay Local Assistance Board
Corrections, Board of

August 22
† Worker's Compensation Second Injury Fund, Joint Subcommittee Studying

August 23
† Land Evaluation Advisory Council, State
† Local and State Government Infrastructure and Revenue Resources Commission, Special Subcommittee of
Medicine, Board of
- Advisory Board on Physical Therapy
† - Advisory Committee on Physician's Assistants

August 26
† Youth and Family Services, State Board of

August 27
† Health Services Cost Review Council, Virginia
† Marine Resources Commission

August 28
Compensation Board

September 3
Hopewell Industrial Safety Council

September 4
Child Mental Health, Interagency Consortium on

September 5
Emergency Planning Committee, Local - Chesterfield County

September 6
† Medicine, Board of
† - Advisory Board on Physical Therapy

September 9
† Land Evaluation Advisory Council, State

September 11
Emergency Response Council, Virginia

September 13
† Medicine, Board of
† - Advisory Committee on Optometry

September 16
† Emergency Planning Committee, Local - County of Prince William, City of Manassas, and City of Manassas Park

September 18
† Conservation and Recreation, Department of

† - Virginia Soil and Water Conservation Board

September 26
Compensation Board

October 3
Emergency Planning Committee, Local - Chesterfield County

PUBLIC HEARINGS

July 15
Coordinating Prevention, Virginia Council on
Housing and Community Development, Department of

July 16
Accountancy, Board for
Gas and Oil Board, Virginia

July 17
Health Professions, Board of
- Task Force on Managed Health Care
† Milk Commission, State
Real Estate Board

July 18
† Air Pollution Control, Department of
† Child Day Care and Early Childhood Programs, Council on
Optometry, Board of
Social Services, Department of
Transportation, Department of

July 19
Racing Commission, Virginia

July 22
Local Government, Commission on
Waste Management, Department of

July 23
Health Services Cost Review Council, Virginia

July 24
Transportation, Department of
Waste Management, Department of

July 25
Transportation, Department of

July 31
† Transportation, Department of

August 19
† Nurse Midwives and Obstetric Care, Task Force to Study

August 20
Local Government, Commission on

September 4
† Environment, Council on the

September 5
† Environment, Council on the

September 13
† Mines, Minerals and Energy, Department of

October 2
† Criminal Justice Services Board