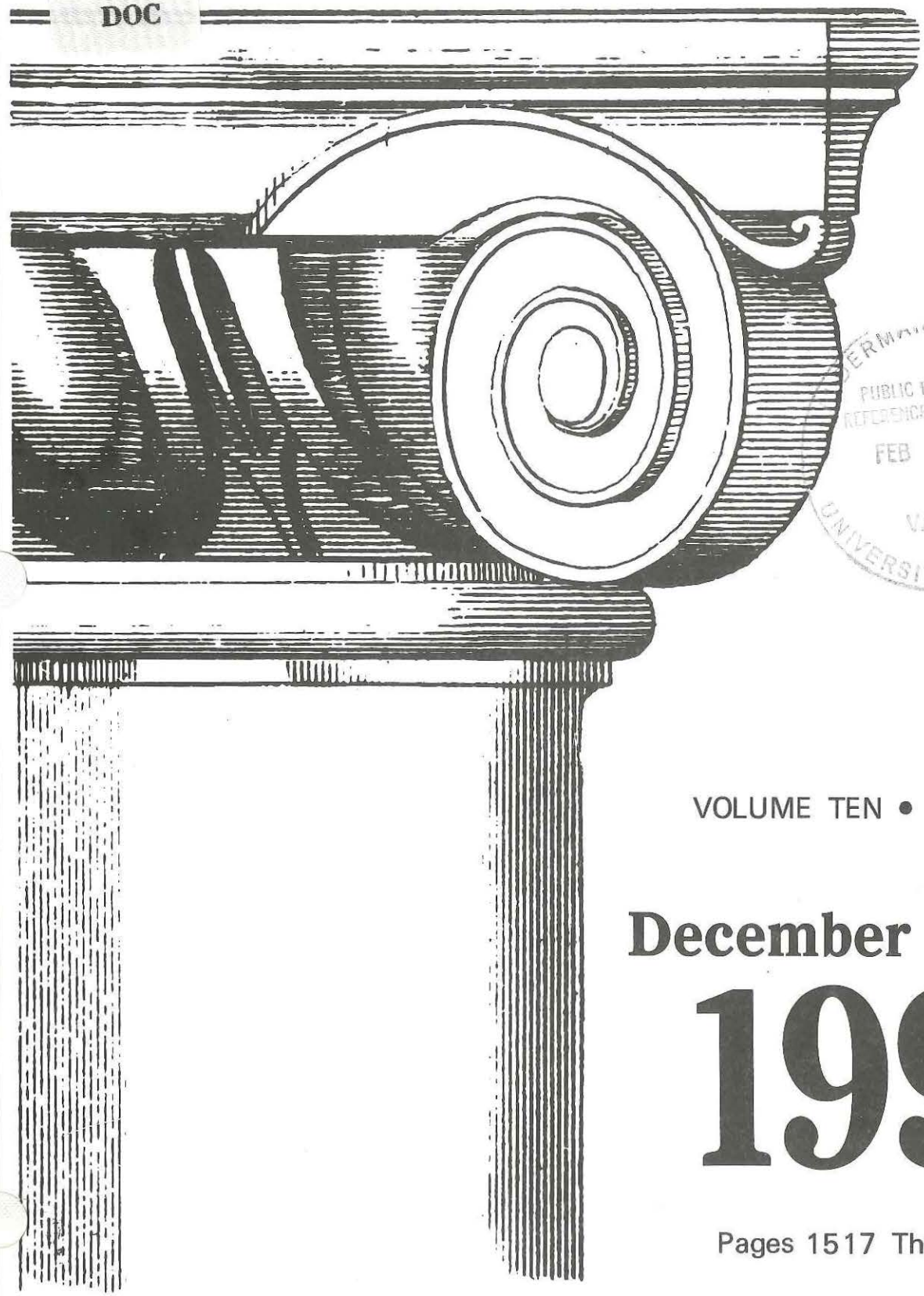
THE VIRGINIA REGISTER

OF REGULATIONS



VOLUME TEN • ISSUE SEVEN

December 27, 1993

1993

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VIRGINIA REGISTER

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

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

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

A regulation becomes effective at the conclusion of this thirty-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the twenty-one day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for solicitation of additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified which date shall be after the expiration of the period for which the Governor has suspended the regulatory process.

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

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

October 1993 through December 1994

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NOTICES OF INTENDED REGULATORY ACTION

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† Indicates entries since last publication of the Virginia Register

AUDITOR OF PUBLIC ACCOUNTS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Auditor of Public Accounts intends to consider promulgating regulations entitled: **Public Participation Guidelines.** The purpose of the proposed action is to provide interested parties with an opportunity for input in the formation and development of regulations adopted by the Auditor of Public Accounts. Public hearings will not be held.

Statutory Authority: §§ 2.1-164, 8.01-582, 15.1-166, 15.1-167, and 15.1-1003 of the Code of Virginia.

Written comments may be submitted until January 31, 1994, to Auditor of Public Accounts, P. O. Box 1295, Richmond, VA 23210.

Contact: William H. Cole, Jr., Deputy Auditor, P. O. Box 1295, Richmond, Va 23210, telephone (804) 225-3350.

VA.R. Doc. No. R94-345; Filed December 8, 1993, 11:22 a.m.

CHILD DAY-CARE COUNCIL

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.** The purpose of the proposed action is to incorporate therapeutic recreation requirements and to review the existing standards for appropriateness and clarity. The council does not intend to hold a public hearing on the proposed amendments after publication; however, oral comments will be accepted at 10 a.m. at the council's regular meetings.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until January 13, 1994, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

VA.R. Doc No. R94-278; Filed November 16, 1993, 2:24 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Child Day-Care Council intends to consider amending regulations entitled: **VR 175-09-01. Minimum Standards for Licensed Child Day Centers Serving School Age Children.** The purpose of the proposed action is to incorporate therapeutic recreation requirements and to review the existing standards for appropriateness and clarity. The council does not intend to hold a public hearing on the proposed amendments after publication; however, oral comments will be accepted at 10 a.m. at the council's regular meetings.

Statutory Authority: § 63.1-202 of the Code of Virginia.

Written comments may be submitted until January 13, 1994, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219, telephone (804) 692-1820.

VA.R. Doc. No. R94-279; Filed November 16, 1993, 2:24 p.m.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Corrections intends to consider promulgating regulations entitled: **VR 230-01-005. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility.** The purpose of the proposed action is to promulgate regulations which govern the form and review process for proposed agreements between the Director of the Department of Corrections and public or private entity to operate a work program in a state correctional facility for inmates confined therein. A public hearing will be held on these regulations after publication of proposed regulations. The date, time, and location of the hearing will be published at a later date.

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994.

Contact: Amy Miller, Regulatory Coordinator, Board of Corrections, P. O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

VA.R. Doc. No. R94-277; Filed November 22, 1993, 3:42 p.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Criminal Justice Services Board intends to consider promulgating regulations entitled: **Rules Relating to Compulsory Minimum Training Standards for Radar Operators.** The purpose of the proposed action is to establish the Rules Relating to Compulsory Minimum Training Standards for Radar Operators. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 9-170(3a) of the Code of Virginia.

Written comments may be submitted until December 29, 1993, to L. T. Eckenrode, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219.

Contact: Paula Scott Dehetre, Staff Executive, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

VA.R. Doc. No. R94-207; Filed November 5, 1993, 12:43 p.m.

DEPARTMENT FOR THE DEAF AND HARD OF HEARING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider repealing regulations entitled: **VR 245-01-01. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing guidelines so that new guidelines may be promulgated for the involvement of the public in the development and promulgation of regulations of the Department for the Deaf and Hard of Hearing. The agency intends to hold a public hearing on the proposed repeal after publication.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Leslie G. Hutcheson, Manager, Special Projects, Department for the Deaf and Hard of Hearing, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-2570 or toll-free, 1-800-552-7917.

VA.R. Doc. No. R94-297; Filed November 24, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider promulgating regulations entitled: **VR 245-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Department for the Deaf and Hard of Hearing. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Leslie G. Hutcheson, Manager, Special Projects, 1100 Bank Street, 12th Floor, Washington Building, Capitol Square, Richmond, VA 23219, telephone (804) 225-2570 or toll-free 1-800-552-7917.

VA.R. Doc. No. R94-297; Filed November 24, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider amending regulations entitled: **VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures for the Distribution of Technological Assistive Devices.** The purpose of the proposed action is to more equitably apply the sliding fee scale mandated by the Code of Virginia. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Bruce A. Sofinski, Manager, Communications and Technology Programs, 1100 Bank Street, 12th Floor, Washington Building, Capitol Square, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

VA.R. Doc. No. R94-295; Filed November 24, 1993, 11:31 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Deaf and Hard of Hearing intends to consider amending regulations entitled: **VR 245-03-01. Regulations Governing Interpreter Services for the Deaf and Hard of Hearing.** The purpose of the proposed action is to: (i) establish the minimum requirements to attain a Virginia Quality Assurance Screening (VQAS) level; (ii) establish a method to maintain an individual's standing as a "qualified interpreter," and (iii) incorporate a consumer input tool, which includes grievance procedure regarding alleged violations of the Code of Ethics. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 63.1-85.4 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on January 12, 1994, to Clayton E. Bowen, Acting Director, Department for the Deaf and Hard of Hearing, 1100 Bank Street, 12th Floor, Richmond, VA 23219.

Contact: Bruce A. Sofinski, Manager, Communications and Technology Programs, Department for the Deaf and Hard of Hearing, 1100 Bank Street, 11th Floor, Richmond, VA 23219-3640, telephone (804) 225-2750 or toll-free 1-800-552-7917.

VA.R. Doc. No. R94-296; Filed November 24, 1993, 11:31 a.m.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **Guidelines for School Crime Lines.** The purpose of the proposed action is to provide a mechanism to receive, screen, and promote student reports of unlawful acts committed in school buildings or on school grounds or at school activities. Any local school board may develop a school crime line program as a joint, self-sustaining, cooperative alliance with law-enforcement authorities, the community, and the news media. Public hearings will be held during the public comment period and this information will be publicized through a press release.

Statutory Authority: § 22.1-280.2 of the Code of Virginia.

Written comments may be submitted until January 3, 1994.

Contact: Diane L. Jay, Grants Program Manager, Virginia Department of Education, P. O. Box 2120, Richmond, Virginia 23216-2120, telephone (804) 371-7582.

VA.R. Doc. No. R94-255; Filed November 10, 1993, 10:41 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider repealing regulations entitled: **VR 270-01-0042. Regulations Governing Contractual Agreements with Professional Personnel.** The purpose of the proposed action is to repeal this regulation and provide a section of newly developed proposed regulations to govern hiring and contractual agreements. The 1992 General Assembly required the Department of Education to study local school division hiring process and provide a report to the 1993 Session. A team of professionals studied hiring procedures for teachers and professional personnel in conjunction with a Department of Education study on the Revision of Teacher Contracts. The result of the study was a report entitled "Report On Contracts For Local School Personnel and Uniform Hiring Procedures For Teachers." The recommendations set forth in the report form the basis for the proposed regulations entitled "VR 270-01-0042:1, Regulations Governing the Employment of Professional Personnel," which are being published in the proposed section of the November 29 issue of The Virginia Register. As a result of the development of the new regulations, VR 270-01-0042, Regulations Governing Contractual Agreements with Professional Personnel, must be repealed. All of the major professional organizations participated as full team members in the development of the recommendations. Representatives from the Virginia Education Association, the Virginia Association of School Superintendents, the Virginia School Boards Association, and the Virginia Association of School Personnel Administrators were team members and their constituency groups provided input into the team process. In addition, representatives of rural, urban, and suburban school communities participated as full team members. The recommendations represent the result of a thorough and comprehensive study and the agreements made among the team members and other representatives indicated above. Considerable input was provided on the perspective of teachers through the representatives from the Virginia Education Association.

The Board of Education and Department of Education will hold public hearings on the proposed regulations.

Statutory Authority: § 22.1-16 of the Code of Virginia.

Written comments may be submitted until December 30, 1993.

Contact: Brenda F. Briggs or Charles W. Finley, Associate Specialists, Compliance, P. O. Box 2120, 101 N. 14th Street, Richmond, VA 23216-2120, telephone (804) 225-2750 or (804) 225-2747.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Education intends to consider promulgating regulations entitled: **VR 270-01-0058. Regulations Governing Alternative Attendance Programs.** The purpose of the proposed regulations is to comply with § 22.1-269.1 of the

Code of Virginia which includes the requirement that the Board of Education provide for the voluntary participation of Virginia school divisions in alternative attendance programs. The agency intends to hold public hearings on the proposed regulations after publication.

Statutory Authority: § 22.1-269.1 of the Code of Virginia.

Written comments may be submitted until January 27, 1994.

Contact: Dr. Judith Douglas, Principal Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2771, toll-free 1-800-292-3820, or FAX (804) 225-2831.

VA.R. Doc. No. R94-346; Filed December 6, 1993, 10:16 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Funeral Directors and Embalmers intends to consider amending regulations entitled: **VR 320-01-03. Regulations for Preeneed Funeral Planning.** The purpose of the proposed action is to amend current regulations for update and to incorporate legislative changes. There will be no public hearing since amendments reflect change in federal law.

Statutory Authority: § 54.1-2820 of the Code of Virginia.

Written comments may be submitted until February 25, 1994.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, Va 23230, telephone (804) 662-9907.

VA.R. Doc. No. R94-347; Filed November 30, 1993, 2:50 p.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-200. Sanitary Regulations for Hotels** (Formerly VR 355-35-02). The purpose of the proposed action is to specify sanitation requirements for hotels and to establish up-to-date standards that will improve public health and safety. A public hearing will be held during the public comment period after the proposed regulations are published.

Statutory Authority: §§ 35.1-11 and 35.1-13 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on December 31, 1993.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, Office of Environmental Health Services, P. O. Box 2448, Suite 115, Richmond, VA 23218-2448, telephone (804) 786-3559.

VA.R. Doc. No. R94-256; Filed November 9, 1993, 10:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-300. Sanitary Regulations for Summer Camps** (Formerly VR 355-35-03). The purpose of the proposed action is to specify sanitation requirements for summer camps and to establish up-to-date standards that will improve public health and safety. A public hearing will be held during the public comment period after the proposed regulations are published.

Statutory Authority: §§ 35.1-11 and 35.1-16 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on December 31, 1993.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, Office of Environmental Health Services, P. O. Box 2448, Suite 115, Richmond, VA 23218-2448, telephone (804) 786-3559.

VA.R. Doc. No. R94-253; Filed November 9, 1993, 10:58 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-400. Sanitary Regulations for Campgrounds** (Formerly VR 355-35-04). The purpose of the proposed action is to specify sanitation requirements for campgrounds and to establish up-to-date standards that will improve public health and safety. A public hearing will be held during the public comment period after the proposed regulations are published.

Statutory Authority: §§ 35.1-11 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on December 31, 1993.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, Office of Environmental Health Services, P. O. Box 2448, Suite 115, Richmond, Virginia 23218-2448, telephone (804) 786-3559.

VA.R. Doc. No. R94-258; Filed November 9, 1993, 10:57 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Board of Health intends to consider amending regulations entitled: **VR 355-35-500. Regulations Governing Swimming Pools at Hotels, Motels, Campgrounds, Summer Camps and Related Facilities** (Formerly VR 355-35-05). The purpose of the proposed action is to specify improved sanitation requirements for the operation and maintenance of swimming pools at hotels, motels, campgrounds, summer camps and related facilities to protect public health and to establish up-to-date standards for these swimming pools. A public hearing will be held during the public comment period after the proposed regulations are published.

Statutory Authority: §§ 35.1-11, 35.1-13, 35.1-16 and 35.1-17 of the Code of Virginia.

Written comments may be submitted until 5 p.m. on December 31, 1993.

Contact: John E. Benko, M.P.H., Director, Division of Food and Environmental Services, Office of Environmental Health Services, P. O. Box 2448, Suite 115, Richmond, VA 23218-2448, telephone (804) 786-3559.

VA.R. Doc. No. R94-257; Filed November 9, 1993, 10:57 a.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend or delete §§ 1.1 B, 1.2, and 2.2 A 3 a through d pertaining to definition of foreign medical schools, and sections otherwise pertaining to above sections. There will be no public hearing unless requested; the amendments are being promulgated to reflect changes which influence medical licensure.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 of the Code of Virginia.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

VA.R. Doc. No. R94-302; Filed November 24, 1993, 10:13 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medicine intends to consider amending regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed action is to amend § 4.2, licensure to practice acupuncture; § 7.1 B, examination fee for podiatry; and sections otherwise pertaining to §§ 4.2 and 7.1 B. There will be no public hearing unless requested; the amendments are being promulgated to comply with statutory changes and increased costs for podiatric examinations.

Statutory Authority: §§ 54.1-2400, 54.1-2900, 54.1-2929, and 54.1-2930.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

VA.R. Doc. No. R94-281; Filed November 16, 1993, 2:16 p.m.

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 repealing regulations entitled: **VR 465-02-2. Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions that Teach the Healing Arts and Guidelines for Completing Application.** The purpose of the proposed regulation is to repeal the regulations which were never promulgated as final regulations. There will be no public hearing unless requested; the emergency regulations which became effective on December 2, 1985, are being repealed because they were never promulgated as final regulations.

Statutory Authority: §§ 54.1-2400 and 54.1-2900 of the Code of Virginia.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

VA.R. Doc. No. R94-294; Filed November 24, 1993, 10:13 a.m.

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 465-03-1. Regulations Governing Physical Therapy.** The purpose of the proposed action is to conduct a regulatory review of the regulations to be consistent with national guidelines and statutory changes. A public hearing will be held on the proposed regulations after publication.

Statutory Authority: §§ 54.1-2400, 54.1-2900, 54.1-2942, 54.1-2943, 54.1-2944, 54.1-2945, 54.1-2946, 54.1-2947, and 54.1-2948 of the Code of Virginia.

Written comments may be submitted until January 14, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Eugenia Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎ .

VA.R. Doc. No. R94-280; Filed November 16, 1993, 2:16 p.m.

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **VR 470-03-01. Rules and Regulations to Assure the Rights of Residents of Hospitals and Other Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to assure regulations on the rights of clients are current and adequately protect the rights of the residents served. This regulation will be incorporated into and superseded by VR 470-03-04, Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The task force will meet regularly throughout the state in hopes of completing the process in 12 months and will conduct public hearings.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, 109 Governor Street, Richmond, VA 23214.

Contact: Rubyjean Gould, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Administrative Services, 109 Governor St., P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. R94-291; Filed November 22, 1993, 2:45 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider repealing regulations entitled: **VR 470-03-03. Rules and Regulations to Assure the Rights of Clients in Community Programs.** The purpose of the proposed action is to assure the Department of Mental Health, Mental Retardation and Substance Abuse Services regulations on the rights of clients are current and adequately protect the rights of the residents served. This regulation will be incorporated into and superseded by VR 470-03-04, Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services. The task force will meet regularly throughout the state in hopes of completing the process in 12 months and will conduct public hearings.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, 109 Governor Street, Richmond, VA 23214.

Contact: Rubyjean Gould, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Administrative Services, 109 Governor Street, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. R94-292; Filed November 22, 1993, 2:45 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Mental Health, Mental Retardation and Substance Abuse Services Board intends to consider promulgating regulations entitled: **VR 470-03-04. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services.** The purpose of the proposed action is to assure the regulations on the rights of clients are current and adequately protect the rights of the residents served. The agency intends to hold a public hearing on the proposed regulations after publication.

Statutory Authority: § 37.1-84.1 of the Code of Virginia.

Written comments may be submitted until January 12, 1994, to Elsie D. Little, State Human Rights Director, P. O. Box 1797, 109 Governor Street, Richmond, VA 23214.

Contact: Rubyjean Gould, Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Administrative Services, 109 Governor Street, Richmond, VA 23214, telephone (804) 786-3915.

VA.R. Doc. No. R94-293; Filed November 24, 1993, 10:46 a.m.

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 promulgating regulations entitled: **VR 495-04-1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency regulations which are in effect until June 27, 1994. The board does not intend to hold a public hearing since there have been no objections to the emergency public participation guidelines currently in effect. A hearing will be held if requested.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230, telephone (804) 662-9909.

VA.R. Doc. No. R94-254; Filed November 10, 1993, 10:39 a.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Optometry intends to consider promulgating regulations entitled: **VR 510-01-2. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines adopted in June 1993, and to provide full opportunity for public participation in the regulation, formation, and promulgation process. The board intends to hold a brief public hearing on the proposed regulations during the comment period.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until January 11, 1994.

Contact: Elizabeth Carter, Executive Director, Board of Optometry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9910.

VA.R. Doc. No. R94-188; Filed October 28, 1993, 3:29 p.m.

BOARD OF PROFESSIONAL COUNSELORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider repealing regulations entitled: **VR 560-01-01. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No hearing is planned during the comment period on this matter as the board plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-3500 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9912.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Professional Counselors intends to consider promulgating regulations entitled: **VR 560-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No public hearing is planned during the comment period on this matter as the board plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-3500 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9912.

VA.R. Doc. No. R94-185; Filed November 2, 1993, 3:27 p.m.

BOARD OF PSYCHOLOGY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Psychology intends to consider repealing regulations entitled: **VR 565-01-1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No public hearing is planned during the comment period on this matter as the board plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-3500 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9913.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Psychology intends to consider promulgating regulations entitled: **VR 565-01-1:1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No public hearing is planned during the comment period on this matter as the board plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-3500 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913.

VA.R. Doc. No. R94-183; Filed November 2, 1993, 3:28 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Social Work intends to consider promulgating regulations entitled: **VR 620-01-3. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines with permanent regulations. No public hearing is planned during the comment period on this matter as the board plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-3700 of the Code of Virginia.

Written comments may be submitted until December 29, 1993.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., Fourth Floor, Richmond, VA 23230, telephone (804) 662-9914.

VA.R. Doc. No. R94-206; Filed November 5, 1993, 12:57 p.m.

BOARD OF VETERINARY MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Veterinary Medicine intends to consider promulgating regulations entitled: **VR 645-01-0:1. Public Participation Guidelines.** The purpose of the proposed action is to replace emergency Public Participation Guidelines adopted in June 1993 and to provide full opportunity for public participation in the regulation, formation and promulgation process. The board intends to hold a public hearing on the proposed regulations during the comment period.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until December 29, 1993, to Terri Behr, Board of Veterinary Medicine, 6606 W. Broad St., Richmond, VA 23230-1717.

Contact: Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., Fourth Floor, Richmond, VA 23230-1717, telephone (804) 662-9915.

VA.R. Doc. No. R94-259; Filed November 10, 1993, 10:32 a.m.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider repealing regulations entitled: **VR 670-01-1. Regulation Guidelines for Public Participation.** The purpose of the proposed action is to repeal regulations outdated by the 1993 amendments to the public participation requirements of the Administrative Process Act. Location and date of public hearing on the repeal of these regulations will be announced at a later date.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-229; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to promulgate regulations entitled: **VR 670-01-100. Public Participation Guidelines.** The purpose of the proposed action is to implement

regulations for public participation in accordance with the 1993 amendments to the public participation requirements of the Administrative Process Act. Location and date of public hearing on the proposed regulations will be announced at a later date.

Statutory Authority: §§ 9-6.14:7.1 and 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-228; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-1. Regulation Governing Provisions of Services in Vocational Rehabilitation.** The purpose of the proposed action is to (i) establish maximum time requirements for determining client eligibility and completing the client grievance process; (ii) change financial eligibility requirements; (iii) expand order of selection; (iv) liberalize the minimum grade point average for college student sponsorship; and (v) specify visual acuity requirements for agency sponsored eye surgery. Numerous language changes will be proposed. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to James Taylor, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-230; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-2. Regulations Governing Provision of Services for the Infants, Children, and Youth Program.** The purpose of the proposed action is to amend the method used to calculate financial eligibility for eye examinations and glasses. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 22.1-217 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Glen Slonneger, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone, (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-231; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-3. Regulation Governing Provision of Services in Rehabilitation Teaching.** The purpose of the proposed action is to (i) augment regulations to incorporate expanded services and definitions; (ii) add a client grievance procedure; (iii) add financial participation guidelines; and (iv) clarify eligibility requirements. A public hearing will be held on the proposed amended regulation after publication. Location and date to be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Jane Ward, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-232; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider repealing regulations entitled: **VR 670-03-4. Provision of Independent Living Rehabilitation Services.** The purpose of the proposed action is to repeal regulations due to loss of federal funds to support a Center for Independent Living within a state agency. A public hearing on the proposed repeal of these regulations will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31,

1993, to Jane Ward, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-233; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-5. Supervision of Administrative Regulations Governing Intake and Social Services.** The purpose of the proposed action is to (i) change age requirement for referral to program for infants, children, and youth; and (ii) delete section on income data collection. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: §§ 63.1-77 and 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Paige Berry, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-234; Filed November 9, 1993, 4:12 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-6. Regulations Governing Deaf-Blind Services.** The purpose of the proposed action is to change the name of the Independent Living and Rehabilitation Teaching programs in § 3.1. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993, to Paige Berry, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-235; Filed November 9, 1993, 4:13 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Visually Handicapped intends to consider amending regulations entitled: **VR 670-03-7. Regulations Governing Low Vision.** The purpose of the proposed action is to clarify financial participation, remove the requirement of opening a case file, and remove the definition of bioptics. A public hearing will be held on the proposed amended regulation after publication. Location and date will be announced at a later date.

Statutory Authority: § 63.1-85 of the Code of Virginia.

Written comments may be submitted until December 31, 1993 to Marge Owens, Program Specialist, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227.

Contact: Joseph A. Bowman, Assistant Commissioner, Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3140 or toll-free 1-800-622-2155.

VA.R. Doc. No. R94-236; Filed November 9, 1993, 4:13 p.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-16-06. Tennessee-Big Sandy River Basin Water Quality Management Plan.** The purpose of the proposed action is to repeal the existing Tennessee-Big Sandy River Basin Water Quality Management Plan while concurrently promulgating a new, updated plan.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which Water Quality Management Plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: WQMPs set forth measures for the department to

implement in order to reach and maintain water quality goals in general terms and numeric loadings for, among other things, five-day biochemical oxygen demand. The Tennessee-Big Sandy WQMP was adopted by the board in 1977. This plan has not been updated to reflect current data, including total maximum daily loading and waste load allocations, scientific studies, new or revised legislation, procedures, policies and regulations, and changes in area growth and development.

Substance and Purpose: The purpose of this proposal is to repeal the existing Tennessee-Big Sandy River Basin WQMP. This plan has not been updated since it was originally adopted by the board in 1977 and is outdated. Concurrently with this proposed action, the board plans to adopt a new, updated Tennessee-Big Sandy River Basin WQMP which will incorporate policies, procedures, regulations, current data and information regarding point and nonpoint sources of pollution which have changed since the original plan was adopted in 1977.

Estimated Impacts: There are approximately 330,000 persons residing in the Tennessee-Big Sandy River Basin. There are 182 municipal and 76 industrial VPDES permits issued for the basin. No financial impact to the Department of Environmental Quality or the regulated community is anticipated by the repeal of the exisiting plan since a new plan will be adopted concurrently. The new proposal will provide the Commonwealth, local governments, industrial firms, agricultural interests and interested citizens with a more up-to-date management tool to assist in achieving and maintaining applicable water quality goals in the basin.

Alternatives: The Tennessee-Big Sandy River Basin WQMP has not been updated to reflect current data, scientific studies, new or revised legislation, policies or regulations, or changes in area growth and development since it was adopted in 1977. One alternative is to continue to use the existing, outdated WQMP. To do this would result in noncompliance with amendments to the Clean Water Act for achieving current water quality goals until a state WQMP is developed and adopted in late 1994.

Comments: The board seeks comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold a public meeting to receive views and comments on Thursday, January 20, 1994, at 7 p.m. at the Unviersity of Virginia Southwest Center, Highway 19 N., Abingdon, VA 24210.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions should contact Ms. Dalton. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 5, 1994.

Advisory Committee/Group: An advisory committee was convened to provide input to the department regarding the content of the proposed new Tennessee-Big Sandy River Basin WQMP. The committee was composed of federal, state and local government representatives and members of environmental organizations. The committee will be reconvened after the close of this public comment period to provide comments on the new draft plan.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this regulatory action after the proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposal after it is published in the Register of Regulations.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-16-06:1. Tennessee-Big Sandy River Basin.** The purpose of the proposed action is to adopt a new Tennessee-Big Sandy River Basin Water Quality Mangement Program.

Basis and Statutory Authority: Section 62.1-44.15(13) of the Code of Virginia authorizes the board to establish policies and programs for effective area-wide or basin-wide water quality control and management. Section 62.1-44.15(10) of the Code of Virginia authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth.

Title 40, Parts 35 and 130, of the Code of Federal Regulations requires states to develop a continuing planning process of which Water Quality Management Plans (WQMP) are a part. No VPDES permit may be issued which is in conflict with an approved WQMP.

Need: The Tennessee-Big Sandy WQMP was adopted by the board in 1977. This plan has not been updated to reflect current data, including total maximum daily loading and waste load allocations, scientific studies, new or revised legislation, procedures, policies and regulations, and changes in area growth and development.

Substance and Purpose: WQMPs set forth measures for the board to implement in order to reach and maintain water quality goals in general terms and numeric loadings for, among other things, five-day biochemical oxygen demand (BOD). The purpose of this proposal is to adopt a new Tennessee-Big Sandy River Basin WQMP to incorporate policies, procedures, regulations, current data and information regarding point and nonpoint sources of pollution which have changed since the original plan was adopted. Concurrently with this action, the board plans to repeal the existing plan.

Estimated Impacts: There are approximately 330,000 persons residing in the Tennessee-Big Sandy River Basin. There are 182 municipal and 76 industrial VPDES permits issued for the basin. No financial impact to the Department of Environmental Quality or the regulated community is anticipated. The proposal will provide the Commonwealth, local governments, industrial firms, agricultural interests and interested citizens with a more up-to-date management tool to assist in achieving and maintaining applicable water quality goals in the basin.

Alternatives: The Tennessee-Big Sandy River Basin WQMP has not been updated to reflect current data, scientific studies, new or revised legislation, policies or regulations, or changes in area growth and development since it was adopted in 1977. One alternative is to continue to use the existing, outdated WQMP. To do this would result in noncompliance with amendments to the Clean Water Act for achieving current water quality goals until a state WQMP is developed and adopted in late 1994.

Comments: The board seeks comments from interested persons on the intended regulatory action and on the costs and benefits of the stated alternative or other alternatives. In addition, the board will hold a public meeting to receive views and comments on Thursday, January 20, 1994, at 7 p.m. at the University of Virginia Southwest Center, Highway 19 N., Abingdon, VA 24210.

Accessibility to Persons with Disabilities: The meeting is being held at a public facility believed to be accessible to persons with disabilities. Any person with questions should contact Ms. Dalton. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than January 5, 1994.

Advisory Committee/Group: An advisory committee was convened to provide input to the department regarding the content of the proposed WQMP. The committee was composed of federal, state and local government representatives and members of environmental organizations. The committee will be reconvened, after the close of this public comment period, to provide comments on the draft plan.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold at least one informational proceeding (informal hearing) on this regulatory action after a proposal is published in the Register of Regulations. This informational proceeding will be convened by a member of the board. The board does not intend to hold a formal evidential hearing on this proposal after it is published in the Register of Regulations.

Statutory Authority: §§ 62.1-44.15(10) and 62.1-44.15(13) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507.

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.

STATE AIR POLLUTION CONTROL BOARD

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ – Federal Operating Permits for Stationary Sources).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Dates:

February 1, 1994 - 8 p.m.
February 3, 1994 - 8 p.m.
February 8, 1994 - 8 p.m.
February 9, 1994 - 8 p.m.
February 10, 1994 - 8 p.m.

Written comments may be submitted until close of business February 25, 1994.

(See Calendar of Events section for additional information)

Purpose: The purpose of the regulation is to require the owner of a stationary source to operate within the terms and conditions of a permit that forms the legally enforceable basis for all federal and state statutory requirements. The proposal is being promulgated to comply with the operating permit requirements of Title V of the federal Clean Air Act and of the federal regulations implementing those requirements, 40 CFR Part 70 (57 Fed. Reg. 32250, July 21, 1992).

Substance: The proposed regulation concerns federal operating permits for stationary sources and is summarized below:

1. The proposed regulation covers major stationary sources of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, and lead; and major stationary sources and nonmajor or area sources subject to either the hazardous air pollutant provisions of § 112 of the federal Clean Air Act (the Act) or to the new source performance standards requirements of § 111 of the Act. Federal requirements specify that sources emitting pollutants that cause acid rain must also be covered by the requirements of this operating permit program. Because an operating permit program that manages these sources of acid rain pollutants must meet the requirements of both Title IV and Title V of the Act and the federal regulations implementing these titles, the department will write a separate regulation that will affect only these sources.

2. The proposed regulation requires that permits for all major sources subject to the program and solid waste incineration units covered by § 129(e) of the Act and subject to new source performance standards that have been incorporated by reference into the state's regulations must be issued within three years of federal approval of the state program. Nonmajor or area sources are deferred from obtaining a permit until the federal Environmental Protection Agency (EPA) decides which of these sources must be permitted.

3. The proposed regulation provides an exemption for sources that are subject only to (i) the new source performance standard for new residential wood heaters, (ii) the national emission standard for hazardous air pollutant on asbestos demolition and renovation, or (iii) the requirement to file a risk management plan under § 112(r) of the Act.

4. The proposed regulation exempts insignificant activities from the requirements of the regulation. Insignificant activities include both a small number of emissions units or activities that are exempt completely and emissions units that are exempt from the requirements for a particular pollutant because of the level of the emissions produced.

5. The pollutants covered by the proposed regulation are the criteria pollutants such as nitrogen oxides, volatile organic compounds and sulfur dioxide; the hazardous air pollutants listed in § 112(b) of the Act and any other list of pollutants promulgated under § 112 including those for which risk management plans have to be filed under § 112(r); the pollutants designated under § 111 of the Act and regulated by the new source performance standards such as total reduced sulfur and sulfuric acid mist; the ozone depleting substances regulated by Title VI of the Act; and the toxic pollutants listed as priority pollutants in the state's Air Toxics Program Priority Implementation Policy.

6. In applying for a permit under the proposed regulation, the source must submit information on all regulated pollutants emitted from all emission units not exempted as insignificant. In issuing permits, the department must include, for major sources, permit terms and conditions for all emissions units not exempted as insignificant. The department must include, for nonmajor or area sources, permit terms and conditions for emissions units that cause the source to be subject to the rule.

7. Applications for sources that are not deferred under the proposed regulation will be due between September 15, 1994, and November 15, 1995.

Approximately 1,900 sources will have to submit applications for initial permits. The department must issue permits to these sources during the three years following EPA approval, presumably between November 15, 1994, and November 15, 1997. One-third of the permits must be issued by the end of each of the three years.

8. In applying for a permit under the proposed regulation, the applicant must provide all pertinent emissions and operation information sufficient for the department to determine the applicable requirements for the source and to write terms and conditions that pertain to the emissions units which must be covered in the permit. The proposed regulation also requires both the applicant and the department to identify completely the regulatory requirements applicable to the stationary source. Furthermore, the applicant and the department must distinguish between applicable federal requirements and applicable state requirements contained in the state's air regulations.

9. The proposed regulation requires the applicant to submit a compliance plan and schedule as part of the application. The plan must state that the applicant is in compliance with all the requirements applicable to the stationary source. For requirements with which the applicant is not in compliance, the applicant must provide an explanation of what is being done to come into compliance and a schedule for attaining compliance with those requirements. The plan and any schedules, once verified by the department, must be included as part of the permit.

10. The proposed regulation requires the inclusion of a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable. The permit shield specifies that a source is not in violation of its permit as long as it is in compliance with the terms and conditions of the permit.

11. The proposed regulation requires a public comment period of 30 days for draft permits for initial permits, significant modifications, and permit renewals following notice in a local newspaper and to persons on the mailing list for such purposes. Certain local officials and states within 50 miles of the facility or whose air quality may be affected by the facility must also be notified of the draft permit. The notice must describe the facility for which a permit has been drafted, the emissions from the facility, and where and from whom additional information can be obtained. A public hearing can be held either at the department's or the public's request if the department finds that there is a significant air quality issue pertinent to the draft permit.

12. The proposed regulation requires the department, after review of the comments and the development of a proposed final permit, to send the proposed permit to EPA. EPA has 45 days during which it can object to the permit. EPA can object if a proposed permit is not in compliance with the applicable requirements or if the requirements of the operating permit regulation have not been carried out. If EPA objects to issuance of a permit, the department has 90 days to revise and issue the permit. EPA can issue the permit if the department fails to revise and issue the permit within the 90-day period. This review process is limited to initial permits, renewal permits, reopened permits and significant permit modifications.

13. Several mechanisms are provided in the proposed regulation to modify the permit: administrative permit amendments, minor permit modifications and significant permit modifications. Administrative permit amendments cover only administrative changes to the permit such as correction of typographical errors, name changes or changes in ownership. Minor permit modifications cover a limited number of operational or emissions changes that occur at the source and that do not require reanalysis of permit terms or conditions, such as a case-by-case determination of an emissions limitation. Significant permit modifications are those modifications that require significant change and reanalysis of the permit to establish the new permit term or condition.

14. The proposed regulation provides operational flexibility for the source through several mechanisms: alternative operating scenarios, on-permit changes, and off-permit changes. Alternative operating scenarios can be submitted as part of the application and permit terms and conditions can be written to cover those scenarios. An on-permit change, one which expressly contravenes a permit term or condition, can be made as long as the change does not exceed emissions allowed under the permit, violate applicable requirements, trigger new source review or federal hazardous air pollutant modification requirements, or involve monitoring, recordkeeping, reporting or compliance certification requirements. An off-permit change, one which is not addressed or prohibited by the permit, can be made as long as the change does not violate applicable requirements or any permit term or condition.

15. The proposed regulation provides that the department may develop a general permit for a category of sources where the sources in the category are generally the same in terms of operations and processes and emit either the same or similar pollutants or pollutants with similar characteristics. To be eligible for a general permit, the sources in the category may not be subject to case-by-case standards or requirements and they must be subject to the same requirements with regard to their operation, emissions, monitoring, reporting, or recordkeeping. The proposed regulation provides that the public, affected states and EPA must be given an opportunity to review and comment on a general permit before permits are

issued to the sources in the category it covers.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: The regulation will be an advantage to the community because it will provide through the operating permits issued under the program a clear documentation of which air quality requirements apply to each source and an enforceable mechanism to ensure that a source is complying with the requirements applicable to it. On the other hand, in order to prepare the initial application under the regulation, sources will need to invest substantial amounts of time, labor, and money. These are federal requirements, however, which will be applied nationwide. Implementing the program in Virginia will not discourage a source from locating in the state.

2. Department: The regulation will be an advantage to the department because it will provide through the operating permits issued under the program a clear documentation of which air quality requirements apply to each source and an enforceable mechanism to ensure that a source is complying with the requirements applicable to it. In addition, the department will enhance its ability to determine compliance and will have a better knowledge of all air emissions in the state. This advantage is especially important with respect to older sources built prior to 1972 which have been exempt from the requirement to get permits under the new source review program. The number of permitted sources in the state, therefore, will expand. In terms of cost, the regulation will require additional time and staff to ensure that clear and enforceable permit terms and conditions are written and that these terms and conditions are complied with. However, the program ensures that these costs are covered through the permit fees charged under the operating permit program.

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia), specifically § 10.1-1308 which authorizes the board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare.

Localities Affected: There is no locality which will bear any identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

Impact:

Sources affected. The department has estimated that approximately 1,900 sources will be subject to the requirements of the proposed regulation during the initial stages of the program. This estimate does not include the nonmajor or area sources which have been deferred for the present under the program. No estimate is currently available on how many area sources will be subject to the requirements of the regulation.

Costs to Affected Entities. The costs to affected entities are the costs of gathering the information needed to complete a permit application, completing the permit application, and the associated costs of inventorying emissions, including paying for stack tests to determine what pollutants are emitted and the quantity of those pollutants. Costs will vary from source to source due principally to the number of regulated pollutants emitted by the source and the number of emissions units and emissions points that make up the source. Another factor that will affect cost is use of a consultant to carry out the tasks of gathering information, completing the permit application, or inventorying emissions instead of the staff working at the source. Consultants are usually hired when the source has insufficient staff or expertise to do the work. This is often true with smaller sources that may be subject to the proposed operating permit regulation due to emissions of hazardous air pollutants or volatile organic compounds. A source becomes subject to the regulation at fairly low emissions levels. In this instance, the costs for the source could be double what they would otherwise be. The costs presented here are based on the source doing the work itself, rather than hiring a consultant.

Information Gathering and Application Preparation. The costs presented here are based on discussions with representatives of several companies who are in the process of developing the information for an operating permit application. These companies tend to be average or above average in the number of processes or operations within the source and the number of pollutants emitted. A good percentage of sources affected by the regulation will be using a team of people to develop the information needed to apply. These people will be gathering information and determining the emissions levels from the various emissions units at the source and, in some instances, will be developing alternative operating scenarios for submission as part of the application. The costs of the staff needed to perform these tasks ranges from $50,000 to $650,000 per source. While these appear to be the average costs, there will undoubtedly be sources whose costs will be lower or higher due to their operational and emissions characteristics. A major source dry cleaner with one pollutant emitted and multiple but identical emissions units should have lower costs. However, a source with an extreme number of various types of processes and operations that emit hundreds or thousands of pollutants could have somewhat higher costs.

Stack Testing. In order to verify the emissions data estimated by company staff or to directly measure hazardous air pollutants, many companies plan to hire consultants who are expert in stack testing. Stack tests are generally expensive; the average cost of one stack test including analysis is $20,000. In addition, stack tests are currently being developed for many metals and other hazardous air pollutants. Such stack tests cost more due to

the cost of development. There is some savings, however, when the same test can be used for multiple stacks. Several of the company representatives contacted indicate their intention to have stack tests done. On average, companies expect to spend $200,000 on these tests.

Initial versus Renewal Costs. The costs discussed above are the initial application costs under the proposed program. Each permit issued must be renewed every five years. The costs of applying for a renewal permit should be considerably less than the costs for an initial application. The range in cost for a renewal permit may be as little as $1,500 to $15,000. However, costs tend to be higher for sources whose operations or products change frequently both at the time of renewal and during the duration of the permit, due to the possibility of having to modify the permit's terms and conditions.

Costs to Agency. Current estimates show that the agency's direct and indirect costs for administering the permit program will total approximately $9.3 million annually for the first two years of the program. Costs should increase slightly in the following years due to the probable increase in cost of living. However, the permit fee program adjusts for these increases by increasing the fee by the same percentage as the increase in the Consumer Price Index.

Comparison With Federal Requirements: With respect to the duration of a permit, Title V of the Act provides for several time periods. The basic provisions of the Act provide that permits for most sources are to be issued for a term not less than three years nor more than five years. Exceptions to the basic provisions are made for incinerators subject to federal regulations and sources of acid rain producing pollutants (mostly large electrical utilities). For the acid rain permits, the term must be for five years. For the incinerators, the permit term must not exceed 12 years; however, the permits must be reviewed every five years. The proposed regulation sets the permit term at five years for all sources. This was done to provide consistency and simplicity to the program, as well as equity of requirements for all source types.

Location of Proposal: The proposal, an analysis conducted by the department (including: a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Department of Environmental Quality
Abingdon Air Regional Office
121 Russell Road
Abingdon, Virginia 24210
Ph: (703) 676-5482

Department of Environmental Quality
Roanoke Air Regional Office
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia 24019
Ph: (703) 561-7000

Department of Environmental Quality
Lynchburg Air Regional Office
7701-03 Timberlake Road
Lynchburg, Virginia 24502
Ph: (804) 582-5120

Department of Environmental Quality
Fredericksburg Air Regional Office
300 Central Road, Suite B
Fredericksburg, Virginia 22401
Ph: (703) 899-4600

Department of Environmental Quality
Richmond Air Regional Office
Arboretum V, Suite 250
9210 Arboretum Parkway
Richmond, Virginia 23236
Ph: (804) 323-2409

Department of Environmental Quality
Hampton Roads Air Regional Office
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia 23320-2168
Ph: (804) 424-6707

Department of Environmental Quality
Northern Virginia Air Regional Office
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia 22150
Ph: (703) 644-0311

Summary:

The proposed regulation concerns federal operating permits for stationary sources and is summarized below:

1. The proposed regulation covers major stationary sources of volatile organic compounds, nitrogen oxides, sulfur dioxide, particulate matter, and lead; and major stationary sources and nonmajor or area sources subject to either the hazardous air pollutant provisions of § 112 of the federal Clean Air Act (the Act) or to the new source performance standards requirements of § 111 of the Act. Federal requirements specify that sources emitting pollutants that cause acid rain must also be covered by the requirements of this operating permit program. Because an operating permit program that manages these sources of acid rain pollutants must meet the requirements of both Title IV and Title V of the Act and the federal regulations implementing these titles, the department will write a separate

regulation that will affect only these sources.

2. The proposed regulation requires that permits for all major sources subject to the program and solid waste incineration units covered by § 129(e) of the Act and subject to new source performance standards that have been incorporated by reference into the state's regulations must be issued within three years of federal approval of the state program. Nonmajor or area sources are deferred from obtaining a permit until the federal Environmental Protection Agency (EPA) decides which of these sources must be permitted.

3. The proposed regulation provides an exemption for sources that are subject only to (i) the new source performance standard for new residential wood heaters, (ii) the national emission standard for hazardous air pollutant on asbestos demolition and renovation, or (iii) the requirement to file a risk management plan under § 112(r) of the Act.

4. The proposed regulation exempts insignificant activities from the requirements of the regulation. Insignificant activities include both a small number of emissions units or activities that are exempt completely and emissions units that are exempt from the requirements for a particular pollutant because of the level of the emissions produced.

5. The pollutants covered by the proposed regulation are the criteria pollutants such as nitrogen oxides, volatile organic compounds and sulfur dioxide; the hazardous air pollutants listed in § 112(b) of the Act and any other list of pollutants promulgated under § 112 including those for which risk management plans have to be filed under § 112(r); the pollutants designated under § 111 of the Act and regulated by the new source performance standards such as total reduced sulfur and sulfuric acid mist; the ozone depleting substances regulated by Title VI of the Act; and the toxic pollutants listed as priority pollutants in the state's Air Toxics Program Priority Implementation Policy.

6. In applying for a permit under the proposed regulation, the source must submit information on all regulated pollutants emitted from all emission units not exempted as insignificant. In issuing permits, the department must include, for major sources, permit terms and conditions for all emissions units not exempted as insignificant. The department must include, for nonmajor or area sources, permit terms and conditions for emissions units that cause the source to be subject to the rule.

7. Applications for sources that are not deferred under the proposed regulation will be due between September 15, 1994, and November 15, 1995. Approximately 1,900 sources will have to submit applications for initial permits. The department must issue permits to these sources during the three years following EPA approval, presumably between November 15, 1994, and November 15, 1997. One-third of the permits must be issued by the end of each of the three years.

8. In applying for a permit under the proposed regulation, the applicant must provide all pertinent emissions and operation information sufficient for the department to determine the applicable requirements for the source and to write terms and conditions that pertain to the emissions units which must be covered in the permit. The proposed regulation also requires both the applicant and the department to identify completely the regulatory requirements applicable to the stationary source. Furthermore, the applicant and the department must distinguish between applicable federal requirements and applicable state requirements contained in the state's air regulations.

9. The proposed regulation requires the applicant to submit a compliance plan and schedule as part of the application. The plan must state that the applicant is in compliance with all the requirements applicable to the stationary source. For requirements with which the applicant is not in compliance, the applicant must provide an explanation of what is being done to come into compliance and a schedule for attaining compliance with those requirements. The plan and any schedules, once verified by the department, must be included as part of the permit.

10. The proposed regulation requires the inclusion of a permit shield for all terms and conditions specified in the permit, including any requirements that are specifically identified as not being applicable. The permit shield specifies that a source is not in violation of its permit as long as it is in compliance with the terms and conditions of the permit.

11. The proposed regulation requires a public comment period of 30 days for draft permits for initial permits, significant modifications, and permit renewals following notice in a local newspaper and to persons on the mailing list for such purposes. Certain local officials and states within 50 miles of the facility or whose air quality may be affected by the facility must also be notified of the draft permit. The notice must describe the facility for which a permit has been drafted, the emissions from the facility, and where and from whom additional information can be obtained. A public hearing can be held either at the department's or the public's request if the department finds that there is a significant air quality issue pertinent to the draft permit.

12. The proposed regulation requires the department, after review of the comments and the development of a proposed final permit, to send the proposed permit to EPA. EPA has 45 days during which it can object to the permit. EPA can object if a proposed permit is

not in compliance with the applicable requirements or if the requirements of the operating permit regulation have not been carried out. If EPA objects to issuance of a permit, the department has 90 days to revise and issue the permit. EPA can issue the permit if the department fails to revise and issue the permit within the 90-day period. This review process is limited to initial permits, renewal permits, reopened permits and significant permit modifications.

13. Several mechanisms are provided in the proposed regulation to modify the permit: administrative permit amendments, minor permit modifications and significant permit modifications. Administrative permit amendments cover only administrative changes to the permit such as correction of typographical errors, name changes or changes in ownership. Minor permit modifications cover a limited number of operational or emissions changes that occur at the source and that do not require reanalysis of permit terms or conditions, such as a case-by-case determination of an emissions limitation. Significant permit modifications are those modifications that require significant change and reanalysis of the permit to establish the new permit term or condition.

14. The proposed regulation provides operational flexibility for the source through several mechanisms: alternative operating scenarios, changes that contravene an express permit term, and changes that are not addressed or prohibited by the permit. Alternative operating scenarios can be submitted as part of the application and permit terms and conditions can be written to cover those scenarios. A change that expressly contravenes a permit term or condition can be made as long as the change does not exceed emissions allowed under the permit, violate applicable requirements, trigger new source review or federal hazardous air pollutant modification requirements, or involve monitoring, recordkeeping, reporting or compliance certification requirements. A change that is not addressed or prohibited by the permit can be made as long as the change does not violate applicable requirements or any permit term or condition.

15. The proposed regulation provides that the department may develop a general permit for a category of sources where the sources in the category are generally the same in terms of operations and processes and emit either the same or similar pollutants or pollutants with similar characteristics. To be eligible for a general permit, the sources in the category may not be subject to case-by-case standards or requirements and they must be subject to the same requirements with regard to their operation, emissions, monitoring, reporting, or recordkeeping. The proposed regulation provides that the public, affected states and EPA must be given an opportunity to review and comment on a general permit before permits are issued to the sources in the category it covers.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ – Federal Operating Permits for Stationary Sources).

PART VIII.
FEDERAL OPERATING PERMITS FOR STATIONARY SOURCES (RULE 8-5).

§ 120-08-0501. Applicability.

A. Except as provided in subsections C and E of this section, the provisions of this rule apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to the provisions of Parts IV and V as adopted pursuant to § 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to the provisions of Part VI as adopted pursuant to § 112 of the federal Clean Air Act.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule shall not apply to the following:

1. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 60, Subpart AAA (Standards of Performance for New Residential Wood Heaters), as prescribed in Rule 5-5.

2. Any source that would be subject to this rule solely because it is subject to the provisions of 40 CFR Part 61, Subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), § 61.145 (Standard for Demolition and Renovation), as prescribed in Rule 6-1.

3. Any source that would be subject to this rule solely because it is subject to regulations or requirements concerning prevention of accidental releases under § 112(r) of the federal Clean Air Act.

4. Any emissions unit that is determined to be shutdown under the provisions of § 120-08-0514.

D. Deferral from initial applicability.

1. Sources deferred from initial applicability. Area sources subject to a standard, limitation, or other requirement under Parts IV, V or VI shall be deferred from the obligation to obtain a permit under this rule. The decision to require a permit for these sources shall be made at the time that a new standard is promulgated and shall be incorporated into Parts IV, V or VI along with the listing of the new standard.

2. Sources not deferred from initial applicability. The following sources shall not be deferred from the obligation to obtain a permit under this rule:

a. Major sources.

b. Solid waste incineration units subject to the provisions of Parts IV and V as adopted pursuant to § 129 (e) of the federal Clean Air Act.

3. Any source deferred under subdivision D 1 of this section may apply for a permit. The board may issue the permit if the issuance of the permit does not interfere with the issuance of permits for sources that are not deferred under this section or otherwise interfere with the implementation of this rule.

4. Review and determination of compliance with Rule 4-3 and Rule 5-3 concerning toxic pollutants.

a. If the review under Rule 4-3 or Rule 5-3 has not been completed for all toxic pollutants, the permit may be issued if the permit contains a schedule for the source to submit emissions information sufficient to allow the board to evaluate the toxic pollutants emitted by the source. The schedule may include deferral of review under Rule 4-3 or Rule 5-3 until the first or second renewal of the permit issued under this rule but shall not extend beyond the second renewal.

b. If the source is subject to the provisions of an emissions standard or requirement (i) in Parts V or VI adopted pursuant to § 112(d) of the federal Clean Air Act or (ii) established by the board pursuant to § 112(g) or § 112(j) of the federal Clean Air Act, the review under Rule 4-3 or Rule 5-3 shall be completed for the toxic pollutant subject to the standard or requirement before a permit may be issued under this rule.

E. Affected sources subject to the requirements of the acid rain program under 40 CFR Parts 72, 73, 75, 77 and 78 are exempt from the provisions of this rule but are subject to the provisions of Rule 8-7.

F. Regardless of the exemptions provided in this section, permits shall be required of owners who circumvent the requirements of this rule by causing or allowing a pattern of ownership or development of a source which, except for the pattern of ownership or development, would otherwise require a permit.

§ 120-08-0502. Definitions.

A. For the purpose of these regulations and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

B. As used in this rule, all terms not defined herein shall have the meaning given them in Part I, unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a pollutant from any stationary source. In general, actual emissions as of a particular date shall equal the highest annual rate, in tons per calendar year, at which the source actually emitted a pollutant during the consecutive five-year period which precedes the particular date and which is representative of normal source operation. The board may allow the use of a different historical time period upon a determination that it is more representative of normal source operation. Actual emissions may be calculated according to a method acceptable to the board and may use the source's actual operating hours, production rates, in-place control equipment and types of materials processed, stored, or combusted during the selected time period.

"Affected source" means a source that includes one or more affected units.

"Affected states" means all states (i) whose air quality may be affected by the permitted source and that are contiguous to Virginia or (ii) that are within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under 40 CFR Parts 72, 73, 75, 77 or 78.

"Applicable federal requirement" means all of the following as they apply to emissions units in a source subject to this rule (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement provided for in the State Implementation Plan, including any source-specific provisions such as consent agreements or orders.

b. Any term or condition of any preconstruction permit issued pursuant to §§ 120-08-01, 120-08-02, or § 120-08-03 or of any operating permit issued pursuant to § 120-08-04, except for terms or conditions derived from applicable state requirements.

c. Any standard or other requirement prescribed under these regulations, particularly the provisions of Parts IV, V or VI, adopted pursuant to requirements of the federal Clean Air Act.

d. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

e. Any compliance monitoring requirements established pursuant to these regulations, with the exception of applicable state requirements.

f. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

g. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

h. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

i. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has determined that such requirements need not be contained in a permit issued under this rule.

j. With regard to temporary sources subject to § 120-08-0509, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in § 120-08-02.

"Applicable requirement" means any applicable federal requirement or applicable state requirement.

"Applicable state requirement" means all of the following as they apply to emissions units in a source subject to this rule (including requirements that have been promulgated or approved through rulemaking at the time of permit issuance but have future effective compliance dates):

a. Any standard or other requirement provided for in Rules 4-2, 4-3, 5-2, or 5-3.

b. Any term or condition of any fuel variance issued pursuant to § 120-02-05 B.

c. Any ambient air quality standard prescribed under § 120-03-02.

d. Any standard or other requirement prescribed under these regulations, other than Rules 4-40 and 4-41, not qualifying as an applicable federal requirement.

e. Any regulatory provision or definition directly associated with or related to any of the specific state requirements listed in this definition.

"Allowable emissions" means the emission rates of a stationary source calculated by using the maximum rated capacity of the emissions units within the source (unless the source is subject to state or federally enforceable limits which restrict the operating rate or hours of operation or both) and the most stringent of the following:

a. Applicable emission standards.

b. The emission limitation specified as a state or federally enforceable permit condition, including those with a future compliance date.

c. Any other applicable emission limitation, including those with a future compliance date.

"Area source" means any stationary source that is not a major source. For purposes of this rule, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Complete application" means an application that contains all the information required pursuant to §§ 120-08-0504 and 120-08-0505 sufficient to determine all applicable requirements and to evaluate the source and its application. Designating an application complete does not preclude the board from requesting or accepting additional information.

"Draft permit" means the version of a permit for which the board offers public participation under § 120-08-0523 or affected state review under § 120-08-0525.

"Emissions allowable under the permit" means a federally or state enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally and state enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

"Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. This term is not meant to alter or affect the definition of the term "unit" in 40 CFR Part 72.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including the following:

a. Requirements developed pursuant to the provisions of § 111 or § 112 of the federal Clean Air Act and adopted into the provisions of Parts IV, V or VI;

b. Requirements adopted by the board and approved by the administrator into the State Implementation Plan;

c. Any permit requirements established pursuant to (i) 40 CFR 52.21 or (ii) Part VIII, with the exception of terms and conditions established to address applicable state requirements; and

d. Any other applicable federal requirement.

"Final permit" means the version of a permit issued by the board under this rule that has completed all review procedures required by §§ 120-08-0523 and 120-08-0525.

"Fugitive emissions" are those emissions which cannot reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"General permit" means a permit issued under this rule that meets the requirements of § 120-08-0508.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable, which causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, and which is designated as such in Appendix U.

"Locality particularly affected" means any locality which bears any identified disproportionate material air quality impact which would not be experienced by other localities.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plant.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants.

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) All other stationary source categories subject to the provisions of Rule 5-5 or Rule 6-1, but only with respect to those air pollutants that are regulated for that category.

c. For ozone nonattainment areas, any source with the potential to emit 100 tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the

references in this definition to nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NOx requirements for ozone nonattainment areas) do not apply.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner that (i) arises from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, (ii) causes an exceedance of a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the failure and (iii) requires immediate corrective action to restore normal operation. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Nonattainment condition" means a condition where any area is shown by air quality monitoring data or by an air quality impact analysis (using modeling or other methods determined by the board to be reliable) to exceed the levels allowed by the ambient air quality standard for a given pollutant, regardless of whether such demonstration is based on current or predicted emissions data.

"Permit," unless the context suggests otherwise, means any permit or group of permits covering a source subject to this rule that is issued, renewed, amended, or revised pursuant to this rule.

"Permit modification" means a revision to a permit issued under this rule that meets the requirements of § 120-08-0517 on minor permit modifications, § 120-08-0518 on group processing of minor permit modifications, or § 120-08-0519 on significant modifications.

"Permit revision" means any permit modification that meets the requirements of §§ 120-08-0517, 120-08-0518 or § 120-08-0519 or any administrative permit amendment that meets the requirements of § 120-08-0516.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Proposed permit" means the version of a permit that the board proposes to issue and forwards to the administrator for review in compliance with § 120-08-0525.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated.

c. Any pollutant subject to any standard promulgated under Parts IV or V as adopted pursuant to the requirements of § 111 of the federal Clean Air Act.

d. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

e. Any pollutant subject to a standard promulgated under or other requirements established under § 112 of the federal Clean Air Act concerning hazardous air pollutants.

f. Any toxic pollutant.

"Renewal" means the process by which a permit is reissued at the end of its term.

"Responsible official" means one of the following:

a. For a business entity, such as a corporation, association or cooperative:

(1) The president, secretary, treasurer, or vice-president of the business entity in charge of a principal business function, or any other person who performs similar policy or decision making functions for the business entity, or

(2) A duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or (ii) the authority to sign documents has been assigned or delegated to such representative in accordance with procedures of the business entity and the delegation of authority is approved in advance by the board;

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA).

"State enforceable" means all limitations and conditions which are enforceable by the board, including those

requirements developed pursuant to § 120-02-11, requirements within any applicable order or variance, and any permit requirements established pursuant to Part VIII.

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual (see Appendix M).

"Toxic pollutant" means any air pollutant for which no ambient air quality standard has been established and which is designated as such in Appendix V. Particulate matter and volatile organic compounds are not toxic pollutants as generic classes of substances but individual substances within these classes may be toxic pollutants because of their toxic properties.

"Uncontrolled emissions" means the emissions from a source when operating at maximum capacity without air pollution control equipment. Air pollution control equipment includes control equipment which is not vital to its operation, except that its use enables the source to conform to applicable air pollution control laws and regulations. Annual uncontrolled emissions shall be based on the maximum annual rated capacity (based on 8,760 hours of operation per year) of the source, unless the source is subject to state and federally enforceable permit conditions which limit the annual hours of operation. Enforceable permit conditions on the type or amount of material combusted or processed may be used in determining the uncontrolled emissions of a source. Secondary emissions do not count in determining the uncontrolled emissions of a stationary source.

§ 120-08-0503. General.

A. No permit may be issued pursuant to this rule until the rule has been approved by the administrator, whether full, interim, partial or otherwise.

B. Except for subsection A of this section, no provision of these regulations shall limit the power of the board to issue an operating permit pursuant to this rule in order to remedy a condition that may cause or contribute to the endangerment of human health or welfare or to remedy a nonattainment condition or both.

C. The board may combine the requirements of and the permit for a source subject to § 120-08-04 with the requirements of and the permit for a source subject to this rule.

§ 120-08-0504. Applications.

A. A single application is required identifying each emission unit subject to this rule. The application shall be submitted according to the requirements of this section, § 120-08-0505 and procedures approved by the board. Where several units are included in one stationary source, a single application covering all units in the source shall be submitted. A separate application is required for each stationary source subject to this rule.

B. For each stationary source, the owner shall submit a timely and complete permit application in accordance with subsections C and D of this section.

C. Timely application.

1. The owner of a stationary source applying for a permit under this rule for the first time shall submit an application within 12 months after the source becomes subject to this rule, except that stationary sources not deferred under § 120-08-0501 D shall submit their applications between September 15, 1994, and November 15, 1995, on a schedule to be determined by the department. A notice of the availability of the list of sources or source categories required to file applications shall be published by January 15, 1994.

2. New source review.

a. The owner of a source subject to the requirements of § 112(g)(2) (construction, reconstruction or modification of sources of hazardous air pollutants) of the federal Clean Air Act or to the provisions of §§ 120-08-01, 120-08-02, or § 120-08-03 shall file a complete application to obtain the permit or permit revision within 12 months after commencing operation. Where an existing permit issued under this rule would prohibit such construction or change in operation, the owner shall obtain a permit revision before commencing operation.

b. The owner of a source may file a complete application to obtain the permit or permit revision under this rule on the same date the permit application is submitted under the requirements of § 112(g)(2) of the federal Clean Air Act or under §§ 120-08-01, 120-08-02, or § 120-08-03.

3. For purposes of permit renewal, the owner shall submit an application at least six months prior to the date of permit expiration.

D. Complete application.

1. To be determined complete, an application shall contain all information required pursuant to § 120-08-0505.

2. Applications for permit revision or for permit reopening shall supply information required under § 120-08-0505 only if the information is related to the proposed change.

3. Within 45 days of receipt of the application, the board shall notify the applicant in writing either that the application is or is not complete. If the application is determined not to be complete, the board shall provide (i) a list of the deficiencies in the notice and (ii) a determination as to whether the application contains sufficient information to begin a review of the application.

4. If the board does not notify the applicant in writing within 60 days of receipt of the application, the application shall be deemed to be complete.

5. For minor permit modifications, a completeness determination shall not be required.

6. If, while processing an application that has been determined to be complete, the board finds that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

7. The submittal of a complete application shall not affect the requirement that any source have a preconstruction permit under §§ 120-08-01, 120-08-02, or § 120-08-03.

8. Upon notification by the board that the application is complete or after 60 days following receipt of the application by the board, the applicant shall submit three additional copies of the complete application to the board.

E. Duty to supplement or correct application.

1. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information.

2. An applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date a complete application was filed but prior to release of a draft permit.

F. Application shield.

1. If an applicant submits a timely and complete application for an initial permit or renewal under this section, the failure of the source to have a permit or the operation of the source without a permit shall not be a violation of this rule until the board takes final action on the application under § 120-08-0511.

2. No source shall operate after the time that it is required to submit a timely and complete application under subsections C and D of this section for a renewal permit, except in compliance with a permit issued under this rule.

3. If the source applies for a minor permit modification and wants to make the change proposed under the provisions of either § 120-08-0517 F or § 120-08-0518 E, the failure of the source to have a permit modification or the operation of the source without a permit modification shall not be a violation of this rule until the board takes final action on the application under § 120-08-0511.

4. If the source notifies the board that it wants to make an operational flexibility permit change under § 120-08-0524 A, the failure of the source to have a permit modification or operation of the source without a permit modification for the permit change shall not be a violation of this rule unless the board notifies the source that the change is not a permit change as specified in § 120-08-0524 A 1 a.

5. If an applicant submits a timely and complete application under this section for a permit renewal but the board fails to issue or deny the renewal permit before the end of the term of the previous permit, (i) the previous permit shall not expire until the renewal permit has been issued or denied and (ii) all the terms and conditions of the previous permit, including any permit shield granted pursuant to § 120-08-0510, shall remain in effect from the date the application is determined to be complete until the renewal permit is issued or denied.

6. The protection under subdivisions F 1 and F 5 (ii) of this section shall cease to apply if, subsequent to the completeness determination made pursuant to subsection D of this section, the applicant fails to submit by the deadline specified in writing by the board any additional information identified as being needed to process the application.

G. Signatory and certification requirements.

1. Any application form, report, compliance certification, or other document required to be submitted to the board under this rule shall be signed by a responsible official.

2. Any person signing a document required to be submitted to the board under this rule shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who

manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

§ 120-08-0505. Application information required.

A. The board shall furnish application forms to applicants.

B. Each application for a permit shall include, but not be limited to, the information listed in subsections C through K of this section.

C. Identifying information.

1. Company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact or both.

2. A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

D. Emissions-related information.

1. All emissions of pollutants for which the source is major and all emissions of regulated air pollutants.

a. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except for those emissions units and emissions levels listed as insignificant activities in Section II of Appendix W.

(1) Any emissions unit exempted from the requirements of this subsection because the emissions level of the unit is deemed to be insignificant under Section II B of Appendix W shall be listed in the permit application and identified as an insignificant activity. This requirement shall not apply to emissions units listed in Section II A of Appendix W.

(2) Regardless of the emissions levels listed in Section II B of Appendix W, the emissions from any emissions unit shall be included in the permit application if the omission of those levels from the application would interfere with the determination or imposition of any applicable requirement or the calculation of permit fees.

b. Emissions shall be calculated for uncontrolled, potential or actual emissions as required by the board.

c. Fugitive emissions shall be included in the permit application regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

2. Additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule approved pursuant to Rule 8-6 as required by the board. Identification and description of all points of emissions described in subdivision D 1 of this section in sufficient detail to establish the basis for fees and applicability of requirements of these regulations and the federal Clean Air Act.

3. Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

4. Information needed to determine or regulate emissions as follows: fuels, fuel use, raw materials, production rates, and operating schedules.

5. Identification and description of air pollution control equipment and compliance monitoring devices or activities.

6. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated air pollutants at the source.

7. Other information required by any applicable requirement (including information related to stack height limitations required under § 120-04-02 I or § 120-05-02 H).

8. Calculations on which the information in subdivisions D 1 through 7 of this section is based. Any calculations shall include sufficient detail to permit assessment of the validity of such calculations.

9. Any information or analysis that the board deems necessary to review the air quality impact of the source.

E. Air pollution control requirements.

1. Citation and description of all applicable requirements.

2. Description of or reference to any applicable test method for determining compliance with each applicable requirement.

F. Additional information.

1. Other specific information that may be necessary to implement and enforce other requirements of these regulations and the federal Clean Air Act or to determine the applicability of such requirements.

2. Any additional information or documentation that the board deems necessary to review and analyze the air pollution aspects of the source.

G. An explanation of any proposed exemptions from otherwise applicable requirements.

H. Additional information as determined to be necessary by the board to define alternative operating scenarios identified by the source pursuant to § 120-08-0507 J or to define permit terms and conditions implementing operational flexibility under § 120-08-0524.

I. Compliance plan.

1. A description of the compliance status of the source with respect to all applicable requirements.

2. A description as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

c. For applicable requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

3. A compliance schedule as follows:

a. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

b. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or by the board if no specific requirement exists.

c. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or board order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

4. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

J. Compliance certification.

1. A certification of compliance with all applicable requirements by a responsible official or a plan and schedule to come into compliance or both as required by subsection I of this section.

2. A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

3. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the board.

4. A statement indicating the source is in compliance with any applicable federal requirements concerning enhanced monitoring and compliance certification.

K. If applicable, a statement indicating that the source has complied with the applicable federal requirement to register a risk management plan under § 112 (r)(7) of the federal Clean Air Act or, as required under subsection I of this section, has made a statement in the source's compliance plan that the source intends to comply with this applicable federal requirement and has set a compliance schedule for registering the plan.

L. Regardless of any other provision of this section, an application shall contain all information needed to determine or to impose any applicable requirement or to evaluate the fee amount required under the schedule approved pursuant to Rule 8-6.

§ 120-08-0506. Emission caps.

A. The board may establish an emission cap for sources or emissions units applicable under this rule for the following reasons:

1. When the applicant requests that a cap be established.

2. When the board determines that the source emitting at allowable levels under these regulations results or will result in a violation of an ambient air quality standard.

3. When the board determines it necessary to correct a nonattainment condition.

B. The criteria in subdivisions B 1 through B 5 of this section shall be met in establishing emission standards for emission caps to the extent necessary to assure that emissions levels are met permanently.

1. If an emissions unit was subject to emission standards prescribed in these regulations prior to the date the permit is issued, a standard covering the emissions unit and pollutants subject to the emission standards shall be incorporated into the permit issued under this rule.

2. A permit issued under this rule may also contain emission standards for emissions units or pollutants that were not subject to emission standards prescribed in these regulations prior to the issuance of the permit.

3. Each standard shall be based on averaging time periods for the standards as appropriate based on applicable air quality standards, any emission standard applicable to the emissions unit prior to the date the permit is issued, or the operation of the emissions unit, or any combination thereof. The emission standards may include the level, quantity, rate, or concentration or any combination thereof for each affected pollutant.

4. In no case shall a standard result in emissions which would exceed the lesser of the following:

a. Allowable emissions for the emissions unit based on emission standards applicable prior to the date the permit is issued.

b. The emissions rate based on the potential to emit of the emissions unit.

5. The standard may prescribe, as an alternative to or a supplement to an emission limitation, an equipment, work practice, fuels specification, process materials, maintenance, or operational standard, or any combination thereof.

C. An emissions standard may be changed to allow an increase in emissions level provided the amended standard meets the requirements of subdivisions B 1 and B 4 of this section and provided the increased emission levels would not make the source subject to §§ 120-08-01, 120-08-02 or § 120-08-03, as appropriate.

§ 120-08-0507. Permit content.

A. General.

1. For major sources subject to this rule, the board shall include in the permit all applicable requirements for all emissions units in the major source except those deemed insignificant in Appendix W.

2. For any source other than a major source subject to this rule, the board shall include in the permit all applicable requirements that apply to emissions units that cause the source to be subject to this rule.

3. Fugitive emissions shall be included in the permit regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

4. Each permit issued under this rule shall include, but not be limited to, the elements listed in subsections B through N of this section.

B. Emission limitations and standards.

Each permit shall contain terms and conditions setting out the following requirements with respect to emission limitations and standards:

1. Emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and shall identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. If applicable requirements contained in these regulations allow a determination of an alternative emission limit at a source, equivalent to that contained in these regulations, to be made in the permit issuance, renewal, or significant modification process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

2. Provisions relating to emission limitations and standards as follows:

a. The source shall operate without causing a violation of the applicable provisions of these regulations.

b. The source shall not cause or contribute to a violation of any applicable ambient air quality standard.

c. The source shall operate in conformance with any applicable control strategy, including any emissions standards or limitations in the State Implementation Plan in effect at the time that a complete application is submitted so as not to prevent or interfere with the attainment or

maintenance of any applicable ambient air quality standard.

C. Equipment specifications and operating parameters.

Each permit shall contain terms and conditions setting out the following requirements with respect to equipment specifications and operating parameters:

1. Specifications for permitted equipment, identified as thoroughly as possible. The identification shall include, but not be limited to, type, rated capacity, and size.

2. Specifications for air pollution control equipment installed or to be installed and the circumstances under which such equipment shall be operated.

3. Specifications for air pollution control equipment operating parameters, where necessary to ensure that the required overall control efficiency is achieved.

D. Duration.

Each permit shall contain a condition setting out the expiration date, reflecting a fixed term of five years.

E. Monitoring.

Each permit shall contain terms and conditions setting out the following requirements with respect to monitoring:

1. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to § 504(b) or § 114(a)(3) of the federal Clean Air Act concerning compliance monitoring, including enhanced compliance monitoring.

2. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subdivision F 1 a of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of subdivision E 2 of this section.

3. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

F. Recordkeeping and reporting.

1. To meet the requirements of subsection E of this section with respect to recordkeeping, the permit shall contain terms and conditions setting out all applicable recordkeeping requirements and requiring, where applicable, the following:

a. Records of monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements.

(2) The date(s) analyses were performed.

(3) The company or entity that performed the analyses.

(4) The analytical techniques or methods used.

(5) The results of such analyses.

(6) The operating conditions existing at the time of sampling or measurement.

b. Retention of records of all monitoring data and support information for at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

2. To meet the requirements of subsection E of this section with respect to reporting, the permit shall contain terms and conditions setting out all applicable reporting requirements and requiring the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with § 120-08-0504 G.

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The board shall define "prompt" in the permit condition in relation to (i) the degree and type of deviation likely to occur and (ii) the applicable requirements.

G. Enforcement.

Each permit shall contain terms and conditions with respect to enforcement that state the following:

1. If any condition, requirement or portion of the permit is held invalid or inapplicable under any circumstance, such invalidity or inapplicability shall not affect or impair the remaining conditions, requirements, or portions of the permit.

2. The permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the federal Clean Air Act or the Virginia Air Pollution Control Law or both and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

3. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

4. The permit may be modified, revoked, reopened, and reissued, or terminated for cause as specified in §§ 120-08-0507 L, 120-08-0520 and 120-08-0522. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

5. The permit does not convey any property rights of any sort, or any exclusive privilege.

6. The permittee shall furnish to the board, within a reasonable time, any information that the board may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the board copies of records required to be kept by the permit and, for information claimed to be confidential, the permittee shall furnish such records to the board along with a claim of confidentiality.

H. Permit fees.

Each permit shall contain a condition setting out the requirement to pay permit fees consistent with the fee schedule approved pursuant to Rule 8-6.

I. Emissions trading.

1. Each permit shall contain a condition with respect to emissions trading that states the following:

No permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

2. Each permit shall contain the following terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases within the permitted facility, to the extent that these regulations provide for trading such increases and decreases without a case-by-case approval of each emissions trade:

a. All terms and conditions required under this section except subsection N shall be included to determine compliance.

b. The permit shield described in § 120-08-0510 shall extend to all terms and conditions that allow such increases and decreases in emissions.

c. The owner shall meet all applicable requirements including the requirements of this rule.

J. Alternative operating scenarios.

Each permit shall contain terms and conditions setting out requirements with respect to reasonably anticipated operating scenarios when identified by the source in its application and approved by the board. Such requirements shall include but not be limited to the following:

1. Contemporaneously with making a change from one operating scenario to another, the source shall record in a log at the permitted facility a record of the scenario under which it is operating.

2. The permit shield described in § 120-08-0510 shall extend to all terms and conditions under each such operating scenario.

3. The terms and conditions of each such alternative scenario shall meet all applicable requirements including the requirements of this rule.

K. Compliance.

Each permit shall contain terms and conditions setting out the following requirements with respect to compliance:

1. Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required in a permit condition to be submitted to the board shall contain a certification by a responsible official that meets the requirements of § 120-08-0504 G.

2. Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the owner shall allow the board to perform the following:

a. Enter upon the premises where the source is located or emissions-related activity is conducted, or where records must be kept under the terms and conditions of the permit.

b. Have access to and copy, at reasonable times, any records that must be kept under the terms and conditions of the permit.

c. Inspect at reasonable times any facilities, equipment (including monitoring and air pollution

control equipment), practices, or operations regulated or required under the permit.

d. Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

3. A schedule of compliance consistent with § 120-08-0505 I.

4. Progress reports consistent with an applicable schedule of compliance and § 120-08-0505 I to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the board. Such progress reports shall contain the following:

a. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved.

b. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

5. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

a. The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the board) of submissions of compliance certifications.

b. In accordance with subsection E of this section, a means for assessing or monitoring the compliance of the source with its emissions limitations, standards, and work practices.

c. A requirement that the compliance certification include the following:

(1) The identification of each term or condition of the permit that is the basis of the certification.

(2) The compliance status.

(3) Whether compliance was continuous or intermittent.

(4) Consistent with subsection E of this section, the method or methods used for determining the compliance status of the source at the time of certification and over the reporting period.

(5) Such other facts as the board may require to determine the compliance status of the source.

d. All compliance certifications shall be submitted by the permittee to the administrator as well as to the board.

e. Such additional requirements as may be specified pursuant to §§ 114(a)(3) and 504(b) of the federal Clean Air Act.

6. Such other provisions as the board may require.

L. Reopening.

Each permit shall contain terms and conditions setting out the following requirements with respect to reopening the permit prior to expiration:

1. The permit shall be reopened if additional applicable requirements become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to § 120-08-0504 F.

2. The permit shall be reopened if the board or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The permit shall be reopened if the administrator or the board determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

M. Miscellaneous.

The permit shall contain terms and conditions pertaining to other requirements as may be necessary to ensure compliance with these regulations, the Virginia Air Pollution Control Law and the federal Clean Air Act.

N. Federal enforceability.

1. All terms and conditions in a permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal Clean Air Act, except as provided in subdivision N 2 of this section.

2. The board shall specifically designate as being only state-enforceable any terms and conditions included in the permit that are not required under the federal Clean Air Act or under any of its applicable federal requirements. Terms and conditions so designated are not subject to the requirements of § 120-08-0525 concerning review of proposed permits by EPA and draft permits by affected states.

3. The board may include as federally enforceable any provisions of the regulations that have been submitted to the administrator for review to be approved under the State Implementation Plan and that have not yet been approved.

§ 120-08-0508. General permits.

A. Requirements for board issuance of a general permit.

1. The board may issue a general permit covering a source category containing numerous similar sources that meet the following criteria:

a. All sources in the category shall be generally the same in terms of operations and processes and emit either the same pollutants or those with similar characteristics.

b. Sources shall not be subject to case-by-case standards or requirements.

c. Sources shall be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, or recordkeeping.

2. Any general permit shall comply with all requirements applicable to other permits issued under this rule.

3. General permits shall (i) identify the criteria by which sources may qualify for the general permit and (ii) describe the process to use in applying for the general permit.

4. The board shall not issue a general permit until the requirements concerning notice and opportunity for public participation under § 120-08-0523 and affected state and EPA review under § 120-08-0525 have been met. However, requirements concerning content of the notice shall replace those specified in § 120-08-0523 C and shall include, but not be limited to, the following:

a. The name, address and telephone number of a department contact from whom interested persons may obtain additional information including copies of the draft general permit.

b. The criteria to be used in determining which sources qualify for the general permit.

c. A brief description of the source category that the department believes qualifies for the general permit including, but not limited to, an estimate of the number of individual sources in the category.

d. A narrative statement of the estimated air quality impact contributed by the source category covered by the general permit including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used, if applicable.

e. A brief description of the application process to be used by sources to request coverage under the general permit.

f. A brief description of the comment procedures required by § 120-08-0523.

g. A brief description of the procedures to be used to request a hearing as required by § 120-08-0523 or the time and place of the public hearing if the board determines to hold a hearing under § 120-08-0523 E 9.

B. Application for a general permit.

1. Sources that would qualify for a general permit shall apply to the board for coverage under the terms of the general permit.

2. The application shall meet the requirements of this rule and include all information necessary to determine qualification for and to assure compliance with the general permit.

3. Sources that become subject to the general permit after it is issued to other sources in the category addressed by the general permit shall file an application with the board using the application process described in the general permit. The board shall issue the general permit to the source if it determines that the source meets the criteria set out in the general permit.

C. Issuance of a general permit.

1. The board shall grant the conditions and terms of the general permit to sources that meet the criteria set out in the general permit covering the specific source category.

2. The issuance of a permit to a source covered by a general permit shall not require compliance with the public participation procedures under § 120-08-0523 and affected state and EPA review under § 120-08-0525.

3. A response to each general permit application may not be provided. The general permit may specify a reasonable time period after which a source that has submitted an application shall be deemed to be authorized to operate under the general permit.

4. Sources covered under a general permit may be issued an individual permit, letter or certification.

5. Provided the individual permit, letter or certification is located at the source, the source shall not be required to have a copy of the general permit.

However, a copy of the general permit shall be retained by the board or at the source's corporate headquarters in the case of franchise operations.

D. Enforcement.

1. Regardless of the permit shield provisions in § 120-08-0510, the source shall be subject to enforcement action under § 120-08-0522 for operation without a permit issued under this rule if the source is later determined by the board or the administrator not to qualify for the conditions and terms of the general permit.

2. The act of granting or denying a request for authorization to operate under a general permit shall not be subject to judicial review.

§ 120-08-0509. Temporary sources.

A. The board may issue a single permit authorizing emissions from similar operations by the same owner at multiple temporary locations.

B. The operation shall be temporary and involve at least one change of location during the term of the permit.

C. Permits for temporary sources shall include the following:

1. Conditions that assure compliance with all applicable requirements at all authorized locations.

2. A condition that the owner shall notify the board not less than 15 days in advance of each change in location.

3. Conditions that ensure compliance with all other provisions of this rule.

§ 120-08-0510. Permit shield.

A. The board shall expressly include in a permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with all applicable requirements in effect as of the date of permit issuance and as specifically identified in the permit.

B. The permit shield shall cover only the following:

1. Applicable requirements that are covered by terms and conditions of the permit.

2. Any applicable requirement specifically identified as being not applicable to the source, provided that the permit includes that determination.

C. Nothing in this section or in any permit issued under this rule shall alter or affect the following:

1. The provisions of § 303 of the federal Clean Air Act (emergency orders), including the authority of the administrator under that section.

2. The liability of an owner for any violation of applicable requirements prior to or at the time of permit issuance.

3. The ability of the administrator to obtain information from a source pursuant to § 114 of the federal Clean Air Act (inspections, monitoring, and entry) or the board pursuant to § 10.1-1315 of the Virginia Air Pollution Control Law.

§ 120-08-0511. Action on permit application.

A. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

1. The board has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under § 120-08-0508.

2. Except for modifications qualifying for minor permit modification procedures under § 120-08-0517 or § 120-08-0518, the board has complied with the requirements for public participation under § 120-08-0523.

3. Except for minor permit modification procedures under § 120-08-0517 or § 120-08-0518, the board has complied with the requirements for notifying and responding to affected states under § 120-08-0525.

4. The conditions of the permit provide for compliance with all applicable requirements and the requirements of this rule.

5. The administrator has received a copy of the proposed permit and any notices required under §§ 120-08-0525 A and 120-08-0525 B and has not objected to issuance of the permit under § 120-08-0525 C within the time period specified therein.

B. The board shall take final action on each permit application (including a request for permit modification or renewal) no later than 18 months after an application is determined by the board to be complete, with the following exceptions:

1. For sources not deferred under § 120-08-0501 D, one-third of the initial permits shall be issued in each of the three years following the administrator's approval of this rule.

2. For permit revisions, as required by the provisions of §§ 120-08-0516, 120-08-0517, 120-08-0518 or § 120-08-0519.

C. Issuance of permits under this rule shall not take precedence over or interfere with the issuance of preconstruction permits under §§ 120-08-01, 120-08-02, or § 120-08-03.

D. The board shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The board shall send this statement to the administrator and to any other person who requests it.

E. Within five days after receipt of the issued permit, the applicant shall maintain the permit on the premises for which the permit has been issued and shall make the permit immediately available to the board upon request.

§ 120-08-0512. Transfer of permits.

A. No person shall transfer a permit from one location to another, unless authorized under § 120-08- 0509, or from one piece of equipment to another.

B. In the case of a transfer of ownership of a stationary source, the new owner shall comply with any current permit issued to the previous owner. The new owner shall notify the board of the change in ownership within 30 days of the transfer.

C. In the case of a name change of a stationary source, the owner shall comply with any current permit issued under the previous source name. The owner shall notify the board of the change in source name within 30 days of the name change.

§ 120-08-0513. Permit renewal and expiration.

A. Permits being renewed shall be subject to the same requirements, including those for public participation, affected state and EPA review, that apply to initial permit issuance under this rule.

B. Permit expiration terminates the source's right to operate unless a timely and complete renewal application has been submitted consistent with § 120-08-0504.

C. If the board fails to act in a timely way on a permit renewal, the administrator may invoke his authority under § 505(e) of the federal Clean Air Act to terminate or revoke and reissue the permit.

§ 120-08-0514. Permanent shutdown for emissions trading.

A. The shutdown of an emissions unit is not creditable for purposes of emissions trading unless a decision concerning shutdown has been made pursuant to the pertinent provisions of Part VIII, including subsections B through D of this section.

B. Upon a final decision by the board that an emissions unit is shut down permanently, the board shall revoke any applicable permit by written notification to the owner and remove the unit from the emission inventory or consider its emissions to be zero in any air quality analysis conducted; and the unit shall not commence operation without a permit being issued under the applicable new source review and operating permit provisions of Part VIII.

C. The final decision shall be rendered as follows:

1. Upon a determination that the emissions unit has not operated for a year or more, the board shall provide written notification to the owner (i) of its tentative decision that the unit is considered to be shut down permanently; (ii) that the decision shall become final if the owner fails to provide, within three months of the notice, written response to the board that the shutdown is not to be considered permanent; and (iii) that the owner has a right to a formal hearing on this issue before the board makes a final decision. The response from the owner shall include the basis for the assertion that the shutdown is not to be considered permanent, a projected date for restart-up of the emissions unit and a request for a formal hearing if the owner wishes to exercise that right.

2. If the board should find that the basis for the assertion is not sound or the projected restart-up date allows for an unreasonably long period of inoperation, the board shall hold a formal hearing on the issue if one is requested. If no hearing is requested, the decision to consider the shutdown permanent shall become final.

D. Nothing in these regulations shall be construed to prevent the board and the owner from making a mutual determination that an emissions unit is shutdown permanently prior to any final decision rendered under subsection C of this section.

§ 120-08-0515. Changes to permits.

A. Changes to a permit issued under this rule and during its five-year term may be initiated by the permittee as specified in subsection B of this section or by the board or administrator as specified in subsection C of this section.

B. Changes initiated by the permittee.

1. The permittee may initiate a change to a permit by requesting an administrative permit amendment, a minor permit modification or a significant permit modification. The requirements for these permit revisions can be found in §§ 120-08-0516 through 120-08-0519.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. Changes initiated by the administrator or the board.

The administrator or the board may initiate a change to a permit through the use of permit reopenings as specified in § 120-08-0520.

D. Permit term.

Changes to permits shall not be used to extend the term of the permit.

§ 120-08-0516. Administrative permit amendments.

A. Administrative permit amendments shall be required for and limited to the following:

1. Correction of typographical or other harmless errors.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Requirement for more frequent monitoring or reporting by the permittee.

4. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of § 120-08-0512 have been fulfilled.

5. Incorporation into the permit of the requirements of permits issued under §§ 120-08-01, 120-08-02, and 120-08-03 when §§ 120-08-01, 120-08-02, and 120-08-03 meet (i) procedural requirements substantially equivalent to the requirements of §§ 120-08-0523 and 120-08-0525 that would be applicable to the change if it were subject to review as a significant permit modification, and (ii) compliance requirements substantially equivalent to those contained in § 120-08-0507.

B. Administrative permit amendment procedures.

1. The board shall take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board shall incorporate the changes without providing notice to the public or affected states under §§ 120-08-0523 and 120-08-0525, except as provided in § 120-08-0523 A 2. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The board shall submit a copy of the revised permit to the administrator.

4. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

C. The board shall allow coverage by the permit shield provisions of § 120-08-0510 for amendments made pursuant to subdivision A 5 of this section.

§ 120-08-0517. Minor permit modifications.

A. Minor permit modification procedures shall be used only for those permit modifications that:

1. Do not violate any applicable requirement;

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements;

3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

a. A federally enforceable emissions cap assumed to avoid classification as a modification under §§ 120-08-01, 120-08-02, 120-08-03 or § 112 of the federal Clean Air Act; and

b. An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act;

5. Are not modifications under §§ 120-08-01, 120-08-02, 120-08-03 or under § 112 of the federal Clean Air Act; and

6. Are not required to be processed as a significant modification under § 120-08-0519 or as an administrative permit amendment under § 120-08-0516.

B. Notwithstanding subsection A of this section and § 120-08-0518 A, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in these regulations.

C. Application.

An application requesting the use of minor permit modification procedures shall meet the requirements of § 120-08-0505 for the modification proposed and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with § 120-08-0504 G, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used.

4. Completed forms for the board to use to notify the administrator and affected states as required under § 120-08-0525.

D. Public participation and EPA and affected state notification.

1. Within five working days of receipt of a complete permit modification application, the board shall meet its obligation under § 120-08-0525 A 1 and B 1 to notify the administrator and affected states of the requested permit modification. The board shall promptly send any notice required under § 120-08-0525 B 2 to the administrator.

2. The public participation requirements of § 120-08-0523 shall not extend to minor permit modifications except as provided in § 120-08-0523 A 2.

E. Timetable for issuance.

1. The board may not issue a final permit modification until after the administrator's 45-day review period or until the administrator has notified the board that he will not object to issuance of the permit modification, whichever occurs first, although the board can approve the permit modification prior to that time.

2. Within 90 days of receipt by the board of an application under minor permit modification procedures or 15 days after the end of the 45-day review period under § 120-08-0525 C, whichever is later, the board shall do one of the following:

a. Issue the permit modification as proposed.

b. Deny the permit modification application.

c. Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures.

d. Revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by § 120-08-0525 A.

F. Ability of owner to make change.

1. The owner may make the change proposed in the minor permit modification application immediately after the application is filed.

2. After the change under subdivision F 1 of this section is made, and until the board takes any of the actions specified in subsection E of this section, the source shall comply with both the applicable requirements governing the change and the proposed permit terms and conditions.

3. During the time period specified in subdivision F 2 of this section, the owner need not comply with the existing permit terms and conditions he seeks to modify. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions he seeks to modify may be enforced against him.

G. Permit shield.

The permit shield under § 120-08-0510 shall not extend to minor permit modifications.

§ 120-08-0518. Group processing of minor permit modifications.

A. Criteria.

Group processing of modifications may be used only for those permit modifications that meet both of the following:

1. Permit modifications that meet the criteria for minor permit modification procedures under § 120-08-0517 A.

2. Permit modifications that collectively are below the threshold level as follows: 10% of the emissions allowed by the permit for the emissions unit for which the change is requested, 20% of the applicable definition of major source in § 120-08-0502, or five tons per year, whichever is least.

B. Application.

An application requesting the use of group processing procedures shall meet the requirements of § 120-08-0505 for the proposed modifications and shall include all of the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Certification by a responsible official, consistent with § 120-08-0504 G, that the proposed modification meets the criteria for use of group processing procedures and a request that such procedures be used.

4. A list of the source's other pending applications awaiting group processing and a determination of whether the requested modification, aggregated with these other applications, equals or exceeds the threshold set under subdivision A 2 of this section.

5. Certification, consistent with § 120-08-0504 G, that the source has notified the administrator of the proposed modification. Such notification need contain only a brief description of the requested modification.

6. Completed forms for the board to use to notify the administrator and affected states as required under § 120-08-0525.

C. Public participation and EPA and affected state notification.

1. On a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of the pending applications for the source equals or exceeds the threshold level set under subdivision A 2 of this section, whichever is earlier, the board promptly shall meet its obligation under § 120-08-0525 A 1 and B 1 to notify the administrator and affected states of the requested permit modifications. The board shall send any notice required under § 120-08-0525 B 2 to the administrator.

2. The public participation requirements of § 120-08-0523 shall not extend to group processing of minor permit modifications except as provided in § 120-08-0523 A 2.

D. Timetable for issuance.

The provisions of § 120-08-0517 E shall apply to modifications eligible for group processing, except that the board shall take one of the actions specified in § 120-08-0517 E 1 through E 4 within 180 days of receipt of the application or 15 days after the end of the 45-day review period under § 120 08-0525 C, whichever is later.

E. Ability of owner to make change.

The provisions of § 120-08-0517 F shall apply to modifications eligible for group processing.

F. Permit shield.

The permit shield under § 120-08-0510 shall not extend to minor permit modifications.

§ 120-08-0519. Significant modification procedures.

A. Criteria.

1. Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications under § 120-08-0517 or § 120-08-0518 or as administrative amendments under § 120-08-0516.

2. Significant modification procedures shall be used for those permit modifications that:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts made under Parts IV, V or VI, or a visibility or increment analysis carried out under Part VIII of these regulations.

c. Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include:

(1) A federally enforceable emissions cap assumed to avoid classification as a modification under §§ 120-08-01, 120-08-02, 120-08-03 or § 112 of the federal Clean Air Act.

(2) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the federal Clean Air Act (early reduction of hazardous air pollutants).

B. Application.

An application for a significant permit modification shall meet the requirements of §§ 120-08-0504 and 120-08-0505 for permit issuance and renewal for the modification proposed and shall include the following:

1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs.

2. A suggested draft permit prepared by the applicant.

3. Completed forms for the board to use to notify the administrator and affected states as required under § 120-08-0525.

C. EPA and affected state notification.

The provisions of § 120-08-0525 shall be carried out for significant permit modifications in the same manner as they would be for initial permit issuance and renewal.

D. Public participation.

The provisions of § 120-08-0523 shall apply to applications made under this section.

E. Timetable for issuance.

The board shall take final action on significant permit modifications within nine months after receipt of a complete application.

F. Ability of owner to make change.

The owner shall not make the change applied for in the significant modification application until the modification is approved by the board under subsection E of this section.

G. Permit shield.

The provisions of § 120-08-0510 shall apply to changes made under this section.

§ 120-08-0520. Reopening for cause.

A. A permit shall be reopened and revised under any of the conditions stated in § 120-08-0507 L.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

D. Reopenings for cause by EPA.

1. If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to subsection A of this section, the administrator shall notify the board and the permittee of such finding in writing.

2. The board shall, within 90 days after receipt of such notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if he finds that a new or revised permit application is necessary or that the board must require the permittee to submit additional information.

3. The administrator shall review the proposed determination from the board within 90 days of receipt.

4. The board shall have 90 days from receipt of an objection by the administrator to resolve any objection that he makes and to terminate, modify, or revoke and reissue the permit in accordance with the objection.

5. If the board fails to submit a proposed determination pursuant to subdivision D 2 of this section or fails to resolve any objection pursuant to subdivision D 4 of this section, the administrator shall terminate, modify, or revoke and reissue the permit after taking the following actions:

a. Providing at least 30 days' notice to the permittee in writing of the reasons for any such action. This notice may be given during the procedures in subdivisions D 1 through D 4 of this section.

b. Providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

§ 120-08-0521. Malfunction.

A. Effect of a malfunction.

A malfunction constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection B of this section are met.

B. Affirmative defense of malfunction.

The affirmative defense of malfunction shall be demonstrated by the permittee through properly signed, contemporaneous operating logs, or other relevant evidence that show the following:

1. A malfunction occurred and the permittee can identify the cause or causes of the malfunction.

2. The permitted facility was at the time being properly operated.

3. During the period of the malfunction the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.

4. The permittee submitted to the board by the deadlines established in subdivisions B 4 a and B 4 b of this section a notice and written statement containing a description of the malfunction, any steps taken to mitigate emissions, and corrective actions taken. The notice fulfills the requirement of § 120-08-0507 F 2 b to report promptly deviations from permit requirements.

a. A notice of the malfunction by facsimile transmission, telephone or telegraph as soon as practicable but no later than four daytime business hours of the time when the emission limitations were exceeded due to the malfunction.

b. A written statement describing the malfunction no later than seven business days following the day the malfunction occurred.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of a malfunction shall have the burden of proof.

D. The provisions of this section are in addition to any malfunction, emergency or upset provision contained in any applicable requirement.

§ 120-08-0522. Enforcement.

A. General.

1. Pursuant to § 10.1-1322 of the Code of Virginia, failure to comply with any condition of a permit shall be considered a violation of the Virginia Air Pollution Control Law.

2. A permit may be revoked or terminated prior to its expiration date if the owner does any of the following:

a. Knowingly makes material misstatements in the permit application or any amendments thereto.

b. Violates, fails, neglects or refuses to comply with (i) the terms or conditions of the permit, (ii) any applicable requirements, or (iii) the applicable provisions of this rule.

c. Causes emissions from the stationary source which result in violations of, or interfere with the attainment and maintenance of, any ambient air quality standard; or fails to operate in conformance with any applicable control strategy, including any emission standards or emission limitations, in the State Implementation Plan in effect at the time that a complete application is submitted.

3. The board may suspend, under such conditions and for such period of time as the board may prescribe, any permit for any of the grounds for revocation or termination contained in subdivision A 2 of this section or for any other violations of these regulations.

B. Penalties.

1. An owner who violates, fails, neglects or refuses to obey any provision of this rule or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1316 of the Virginia Air Pollution Control Law.

2. Any owner who knowingly violates, fails, neglects or refuses to obey any provision of this rule or the Virginia Air Pollution Control Law, any applicable requirement, or any permit condition shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

3. Any owner who knowingly makes any false statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method shall be subject to the provisions of § 10.1-1320 of the Virginia Air Pollution Control Law.

C. Appeals.

1. The board shall notify the applicant in writing of its decision, with its reasons, to suspend, revoke or terminate a permit.

2. Appeal from any decision of the board under subdivision C 1 of this section may be taken pursuant to § 120-02-09, § 10.1-1318 of the Virginia Air Pollution Control Law, and the Administrative Process Act.

D. The existence of a permit under this rule shall constitute a defense of a violation of any applicable provision of the Virginia Air Pollution Control Law or these regulations if the permit contains a condition providing the permit shield as specified in § 120-08-0510 and if the requirements of § 120-08-0510 have been met. The existence of a permit shield condition shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of other governmental entities having jurisdiction. Otherwise, the existence of a permit under this rule shall not constitute a defense of a violation of the Virginia Air Pollution Control Law or these regulations and shall not relieve any owner of the responsibility to comply with any applicable regulations, laws, ordinances and orders of the governmental entities having jurisdiction.

E. Inspections and right of entry.

1. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law and § 120-02-30, has the authority to require that air pollution records and reports be made available upon request and to require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of the permits issued under this rule.

2. The director, as authorized under § 10.1-1307.3 of the Virginia Air Pollution Control Law, has the authority, upon presenting appropriate credentials to the owner, to do the following:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in the

Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the board or its representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the board shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection.

F. Other enforcement mechanisms.

The board may enforce permits issued under this rule through the use of other enforcement mechanisms such as consent orders and special orders. The procedures for using these mechanisms are contained in §§ 120-02-02 and 120-02-03 and in §§ 10.1-1307 D, 10.1-1309, and 10.1-1309.1 of the Virginia Air Pollution Control Law.

§ 120-08-0523. Public participation.

A. Required public comment and public notice.

1. Except for modifications qualifying for minor permit modification procedures and administrative permit amendments, draft permits for initial permit issuance, significant modifications, and renewals shall be subject to a public comment period of at least 30 days. The board shall notify the public using the procedures in subsection B of this section.

2. The board shall provide periodic notification no less frequently than semi-annually to persons on a permit mailing list who have requested such information on applications for and board decisions on any of the following:

a. Minor permit modifications.

b. Administrative permit amendments.

c. Operational flexibility changes under § 120-08-0524 A and B.

B. Notification.

1. The board shall notify the public of the draft permit or draft permit modification by advertisement in at least one local newspaper of general circulation in the locality particularly affected and to persons on a permit mailing list who have requested such information of the opportunity for public comment on the information available for public inspection under the provisions of subsection C of this section.

2. For major sources subject to this rule, the notice shall be mailed to the chief elected official and chief administrative officer and the planning district commission for the locality particularly affected.

C. Content of the public notice and availability of information.

1. The notice shall include but not be limited to the following:

a. The source name, address and description of specific location.

b. The name and address of the permittee.

c. The name and address of the regional office processing the permit.

d. The activity or activities for which the permit action is sought.

e. The emissions change that would result from the permit issuance or modification.

f. A statement of estimated local impact of the activity for which the permit is sought, including information regarding specific pollutants and the total quantity of each emitted pollutant and the type and quantity of fuels used.

g. The name, address, and telephone number of a department contact from whom interested persons may obtain additional information, including copies of the draft permit or draft permit modification, the application, air quality impact information if an ambient air dispersion analysis was performed and all relevant supporting materials, including the compliance plan.

h. A brief description of the comment procedures required by this section.

i. A brief description of the procedures to be used to request a hearing or the time and place of the public hearing if the board determines to hold a hearing under subdivision E 9 of this section.

2. Information on the permit application (exclusive of confidential information under § 120-02-30), as well as the draft permit or draft permit modification, shall be available for public inspection during the entire public comment period at the regional office.

D. Affected states review.

The board shall provide such notice and opportunity for participation by affected states as is provided for by § 120-08-0525.

E. Opportunity for public hearing.

1. The board shall provide an opportunity for a public hearing as described in subdivisions E 2 through E 6 of this section.

2. Following the initial publication of notice of a public comment period, the board will receive written requests for a public hearing to consider the draft permit or draft permit modification. The request shall be submitted within 30 days of the appearance of the notice in the newspaper. Request for a public hearing shall contain the following information:

a. The name, mailing address and telephone number of the requester.

b. The names and addresses of all persons for whom the requester is acting as a representative.

c. The reason why a hearing is requested, including the air quality concern that forms the basis for the request.

d. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative, including information on how the operation of the facility under consideration affects the requester.

3. The board shall review all requests for public hearing filed as required under subdivision E 2 of this section and, within 30 calendar days following the expiration of the public comment period, shall grant a public hearing if it finds both of the following:

a. There is significant public interest in the air quality issues raised by the permit application in question.

b. There are substantial, disputed air quality issues relevant to the permit application in question.

4. The board shall notify by mail the applicant and each requester, at his last known address, of the decision to convene or deny a public hearing. The notice shall contain the basis for the decision to grant or deny a public hearing. If the public hearing is granted, the notice shall contain a description of procedures for the public hearing.

5. If the board decides to hold a public hearing, the hearing shall be scheduled at least 30 and no later than 60 days after mailing the notification required in subdivision E 4 of this section.

6. The procedures for notification to the public and availability of information used for the public comment period as provided in subsection C of this section shall also be followed for the public hearing. The hearing shall be held in the affected air quality control region.

7. As an alternative to the requirements of subdivisions E 1 through E 6 of this section, the board may hold a public hearing if an applicant requests that a public hearing be held or if, prior to the public comment period, the board determines that the conditions in subdivisions E 3 a and b of this section pertain to the permit application in question.

8. The board may hold a public hearing for more than one draft permit or draft permit modification if the location for the public hearing is appropriate for the sources under consideration and if the public hearing time expected for each draft permit or draft permit modification will provide sufficient time for public concerns to be heard.

9. Written comments shall be accepted by the board for at least fifteen days after the hearing.

F. Public comment record.

1. The board shall keep two records of public participation as follows:

a. A record of the commenters.

b. A record of the issues raised during the public participation process so that the administrator may fulfill his obligation under § 505(b)(2) of the federal Clean Air Act to determine whether a citizen petition may be granted.

2. Such records shall be made available to the public upon request.

§ 120-08-0524. Operational flexibility.

The board shall allow, under conditions specified in this section, operational flexibility changes at a source that do not require a revision to be made to the permit in order for the changes to occur. Such changes shall be classified as follows: (i) those that contravene an express permit term, or (ii) those that are not addressed or prohibited by the permit. The conditions under which the board shall allow these changes to be made are specified in subsections A and B of this section, respectively.

A. Changes that contravene an express permit term.

1. General.

a. The board shall allow a change at a stationary source that changes a permit condition with the exception of the following:

(1) A modification under §§ 120-08-01, 120-08-02 or § 120-08-03.

(2) A modification under the provisions of or regulations promulgated pursuant to § 112 of the federal Clean Air Act.

(3) A change that would exceed the emissions allowable under the permit.

(4) A change that would violate applicable requirements.

(5) A change that would contravene federally or state enforceable permit terms or conditions or both that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

c. The permit shield under § 120-08-0510 shall not extend to any change made pursuant to subsection A of this section.

2. Emission trades within stationary sources provided for in the State Implementation Plan.

a. With the exception of the changes listed in subdivision A 1 a of this section, the board shall allow permitted sources to trade increases and decreases in emissions within the permitted facility (i) where these regulations or the State Implementation Plan provides for such emissions trades without requiring a permit revision and (ii) where the permit does not already provide for such emissions trading.

b. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall include such information as may be required by the provision in these regulations or the State Implementation Plan authorizing the emissions trade, including at a minimum the name and location of the facility, when the proposed change will occur, a description of the proposed change, any change in emissions, the permit requirements with which the source will comply using the emissions trading provisions of these regulations or the State Implementation Plan, and the pollutants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the regulations or State Implementation Plan and which provide for the emissions trade.

c. The permit shield described in § 120-08-0510 shall not extend to any change made under subdivision A 2 of this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of these regulations and the State Implementation Plan.

3. Emission trades within stationary sources to comply with an emissions cap in the permit.

a. If a permit applicant requests it, the board shall issue permits that contain terms and conditions, including all terms required under § 120-08-0507 to determine compliance, allowing for the trading of emissions increases and decreases within the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in his application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The board shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements.

b. The board shall not allow an on-permit change to be made under subsection C of this section if it is a change listed in subdivision A 1 of this section.

c. The owner shall provide written notification to the administrator and the board at least seven days in advance of the proposed change. The written notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

d. The permit shield under § 120-08-0510 shall extend to terms and conditions that allow such increases and decreases in emissions.

B. Changes that are not addressed or prohibited by the permit.

1. The board shall allow the owner to make changes that are not addressed or prohibited by the permit unless the changes are subject to the following requirements:

a. Modifications under §§ 120-08-01, 120-08-02 or § 120-08-03.

b. Modifications under § 112 of the federal Clean Air Act or the regulations promulgated under § 112.

2. Each change shall meet all applicable requirements and shall not violate any existing permit term or condition.

3. Sources shall provide contemporaneous written notice to the board and the administrator of each change, except for changes to emissions units deemed insignificant and listed in Section II A of Appendix W. Such written notice shall describe each change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

4. The change shall not qualify for the permit shield under § 120-08-0510.

5. The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

§ 120-08-0525. Permit review by EPA and affected states.

A. Transmission of information to the administrator.

1. The board shall provide to the administrator a copy of each permit application (including any application for permit modification), each proposed permit, and each final permit issued under this rule.

2. The board shall keep for five years such records and submit to the administrator such information as he may reasonably require to ascertain whether the Virginia program complies with the requirements of the federal Clean Air Act or of 40 CFR Part 70.

B. Review by affected states.

1. The board shall give notice of each draft permit to any affected state on or before the time that the board provides this notice to the public under § 120-08-0523, except to the extent that § 120-08-0517 or § 120-08-0518 requires the timing of the notice to be different.

2. The board, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under § 120-08-0517 or § 120-08-0518), shall notify the administrator and any affected state in writing of any refusal by the board to accept recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the reasons the board will not accept a recommendation. The board shall not be obligated to accept recommendations that are not based on applicable requirements or the requirements of this rule.

C. EPA objection.

1. No permit for which an application must be transmitted to the administrator under subsection A of this section shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

2. Any objection by the administrator under subdivision C 1 of this section shall include a statement of the reasons for the objection and a description of the terms and conditions that the permit must include to respond to the objection. The administrator shall provide the permit applicant a copy of the objection.

3. Failure of the board to do any of the following also shall constitute grounds for an objection:

a. Comply with subsection A or B of this section or both.

b. Submit any information necessary to review adequately the proposed permit.

c. Process the permit under the public comment procedures in § 120-08-0523 except for minor permit modifications.

4. If, within 90 days after the date of an objection under subdivision C 1 of this section, the board fails to revise and submit a proposed permit in response to the objection, the administrator will issue or deny the permit in accordance with the requirements of 40 CFR Part 71.

D. Public petitions to the administrator.

1. If the administrator does not object in writing under subsection C of this section, any person may petition the administrator within 60 days after the expiration of the 45-day review period for the administrator to make such objection.

2. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in § 120-08-0523, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

3. If the administrator objects to the permit as a result of a petition filed under subdivision D 1 of this section, the board shall not issue the permit until the objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an objection by the administrator.

4. If the board has issued a permit prior to receipt of an objection by the administrator under subdivision D

1 of this section, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in § 120-08-0520 D 4 or D 5 a and b except in unusual circumstances, and the board may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

E. Prohibition on default issuance.

No permit (including a permit renewal or modification) shall be issued by the board until affected states and the administrator have had an opportunity to review the proposed permit as required under this section.

APPENDIX U
HAZARDOUS AIR POLLUTANTS

I. General.

A. Section II designates hazardous air pollutants for the purposes of Rules 8-5 and 8-6.

B. The number to the left of each chemical name in section II of this appendix is the Chemical Abstract Service (CAS) number for that substance. Chemical names not indicating a unique substance have not been assigned CAS numbers (compounds, coke oven emissions, glycol ethers, fine mineral fibers, polycyclic organic matter, and radionuclides). The definitions of glycol ethers and all chemical compounds (unless otherwise specified) include any unique substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of the structure of that substance.

II. List of hazardous air pollutants.

75070 Acetaldehyde

60355 Acetamide

75058 Acetonitrile

53963 2-Acetylaminofluorene

107028 Acrolein

79061 Acrylamide

79107 Acrylic acid

107131 Acrylonitrile

107051 Allyl chloride

92671 4-Aminobiphenyl

62533 Aniline

90040 o-Anisidine

1332214 Asbestos

71432 Benzene (including benzene from gasoline)

92875 Benzidine

98077 Benzotrichloride

100447 Benzyl chloride

92524 Biphenyl

117817 Bis(2-ethylhexyl)phthalate (DEHP)

542881 Bis(chloromethyl)ether

75252 Bromoform

106990 1,3-Butadiene

156627 Calcium cyanamide

105602 Caprolactam

133062 Captan

63252 Carbaryl

75150 Carbon disulfide

56235 Carbon tetrachloride

463581 Carbonyl sulfide

120809 Catechol

133904 Chloramben

57749 Chlordane

7782505 Chlorine

79118 Chloroacetic acid

532274 2-Chloroacetophenone

108907 Chlorobenzene

510156 Chlorobenzilate

67663 Chloroform

107302 Chloromethyl methyl ether

126998 Chloroprene

1319773 Cresols/Cresylic acid (isomers and mixture)

95487 o-Cresol

108394 m-Cresol

106445 p-Cresol

98828 Cumene

94757 2,4-D, salts and esters

3547044 DDE

334883 Diazomethane

132649 Dibenzofurans

96128 1,2-Dibromo-3-chloropropane

84742 Dibutylphthalate

106467 1,4-Dichlorobenzene(p)

91941 3,3-Dichlorobenzidene

111444 Dichloroethyl ether (Bis(2-chloroethyl)ether)

542756 1,3-Dichloropropene

62737 Dichlorvos

111422 Diethanolamine

121697 N,N-Diethyl aniline (N,N-Dimethylaniline)

64675 Diethyl sulfate

119904 3,3-Dimethoxybenzidine

60117 Dimethyl aminoazobenzene

119937 3,3'-Dimethyl benzidine

79447 Dimethyl carbamoyl chloride

68122 Dimethyl formamide

57147 1,1-Dimethyl hydrazine

131113 Dimethyl phthalate

77781 Dimethyl sulfate

534521 4,6-Dinitro-o-cresol, and salts

51285 2,4-Dinitrophenol

121142 2,4-Dinitrotoluene

123911 1,4-Dioxane (1,4-Diethyleneoxide)

122667 1,2-Diphenylhydrazine

106898 Epichlorohydrin (1-Chloro-2,3-epoxypropane)

106887 1,2-Epoxybutane

140885 Ethyl acrylate

100414 Ethyl benzene

51796 Ethyl carbamate (Urethane)

75003 Ethyl chloride (Chloroethane)

106934 Ethylene dibromide (Dibromoethane)

107062 Ethylene dichloride (1,2-Dichloroethane)

107211 Ethylene glycol

151564 Ethylene imine (Aziridine)

75218 Ethylene oxide

96457 Ethylene thiourea

75343 Ethylidene dichloride (1,1-Dichloroethane)

50000 Formaldehyde

76448 Heptachlor

118741 Hexachlorobenzene

87683 Hexachlorobutadiene

77474 Hexachlorocyclopentadiene

67721 Hexachloroethane

822060 Hexamethylene-1,6-diisocyanate

680319 Hexamethylphosphoramide

110543 Hexane

302012 Hydrazine

7647010 Hydrochloric acid

7664393 Hydrogen fluoride (hydrofluoric acid)

7783064 Hydrogen sulfide

123319 Hydroquinone

78591 Isophorone

58899 Lindane (all isomers)

108316 Maleic anhydride

67561 Methanol

72435 Methoxychlor

74839 Methyl bromide (Bromomethane)

74873 Methyl chloride (Chloromethane)

71556 Methyl chloroform (1,1,1-Trichloroethane)

78933 Methyl ethyl ketone (2-Butanone)

60344 Methyl hydrazine

74884 Methyl iodide (Iodomethane)

108101 Methyl isobutyl ketone (Hexone)

624839 Methyl isocyanate

80626 Methyl methacrylate

1634044 Methyl tert butyl ether

101144 4,4-Methylene bis(2-chloroaniline)

75092 Methylene chloride (Dichloromethane)

101688 Methylene diphenyl diisocyanate (MDI)

101779 4,4'-Methylenedianiline

91203 Naphthalene

98953 Nitrobenzene

92933 4-Nitrobiphenyl

100027 4-Nitrophenol

79469 2-Nitropropane

684935 N-Nitroso-N-methylurea

62759 N-Nitrosodimethylamine

59892 N-Nitrosomorpholine

56382 Parathion

82688 Pentachloronitrobenzene (Quintobenzene)

87865 Pentachlorophenol

108952 Phenol

106503 p-Phenylenediamine

75445 Phosgene

7803512 Phosphine

7723140 Phosphorus

85449 Phthalic anhydride

1336363 Polychlorinated biphenyls (Aroclors)

1120714 1,3-Propane sultone

57578 beta-Propiolactone

123386 Propionaldehyde

114261 Propoxur (Baygon)

78875 Propylene dichloride (1,2-Dichloropropane)

75569 Propylene oxide

75558 1,2-Propylenimine (2-Methyl aziridine)

91225 Quinoline

106514 Quinone

100425 Styrene

96093 Styrene oxide

1746016 2,3,7,8-Tetrachlorodibenzo-p-dioxin

79345 1,1,2,2-Tetrachloroethane

127184 Tetrachloroethylene (Perchloroethylene)

7550450 Titanium tetrachloride

108883 Toluene

95807 2,4-Toluene diamine

584849 2,4-Toluene diisocyanate

95534 0-Toluidine

8001352 Toxaphene (chlorinated camphene)

120821 1,2,4-Trichlorobenzene

79005 1,1,2-Trichloroethane

79016 Trichloroethylene

95954 2,4,5-Trichlorophenol

88062 2,4,6-Trichlorophenol

121448 Triethylamine

1582098 Trifluralin

540841 2,2,4-Trimethylpentane

108054 Vinyl acetate

593602 Vinyl bromide

75014 Vinyl chloride

75354 Vinylidene chloride (1,1-Dichloroethylene)

1330207 Xylenes (isomers and mixture)

95476 0-Xylenes

108383 m-Xylenes

106423 p-Xylenes

Antimony compounds

Arsenic compounds (inorganic including arsine)

Beryllium compounds

Cadmium compounds

Chromium compounds

Cobalt compounds

Coke oven emissions

Cyanide compounds [1]

Glycol ethers [2]

Lead compounds

Manganese compounds

Mercury compounds

Fine mineral fibers [3]

Nickel compounds

Polycyclic organic matter [4]

Radionuclides (including radon)

Selenium compounds

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[1] X'CN where X = H' or any other group where a formal dissociation may occur; for example, KCN or Ca(CN)2.

[2] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH2CH)n-OH. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter one micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100° C.

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APPENDIX V
TOXIC POLLUTANTS

I. General.

A. Section II designates toxic pollutants for the purpose of Rule 8-5.

B. The number to the left of each chemical name in Section II B of this appendix is the Chemical Abstract Service (CAS) number for that substance. Chemical names not indicating a unique substance have not been assigned CAS numbers (zinc compounds). The definition of all chemical compounds (unless otherwise specified) include any unique substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of the structure of that substance.

II. List of toxic pollutants.

A. The hazardous air pollutants listed in Appendix U, Section II.

B. The following pollutants:

64197 Acetic acid

67641 Acetone

7429905 Aluminum (fume or dust)

1344281 Aluminum oxide

7664417 Ammonia

1336216 Ammonium hydroxide

6484522 Ammonium nitrate (solution)

120127 Anthracene

Barium compounds

103231 Bis(2-ethylhexyl) adipate

111762 2-Butoxy ethanol

141322 Butyl acrylate

71363 n-Butyl alcohol

123728 Butyraldehyde

1305788 Calcium oxide

10049044 Chlorine dioxide

65996932 Coal tar pitch volatiles

Copper and copper compounds

110827 Cyclohexane

1163195 Decabromodiphenyl oxide

117817 Di(2-Ethylhexyl) phthalate

60297 Diethyl ether

84662 Diethyl phthalate

127195 Dimethyl acetamide

117840 n-Dioctyl phthalate

Dioxins

64175 Ethanol

110805 2-Ethoxy ethanol

74851 Ethylene

107073 Ethylene chlorohydrin

98011 Furfural

78842 Isobutyraldehyde

67630 Isopropyl alcohol

7784409 Lead arsenate

96333 Methyl acrylate

101688 Methylenebis (phenylisocyanate)

91598 beta-Napthylamine

13463393 Nickel carbonyl

7697372 Nitric acid

55630 Nitroglycerin

7664382 Phosphoric acid

115071 Propylene

110861 Pyridine

7440224 Silver

7664939 Sulfuric acid

100210 Terephthalic acid

91087 2,6-Toluene diisocyanate

7440622 Vanadium (fume or dust)

7440666 Zinc (fume or dust)

Zinc compounds

APPENDIX W
INSIGNIFICANT ACTIVITIES

I. General.

A. For the purposes of Rules 8-5, 8-6 and 8-7, insignificant activities shall be those activities listed in Section II of this appendix. There are two categories of insignificant activities as follows:

1. Insignificant emissions units. This category includes emissions units that are deemed insignificant because they are sufficiently small so as to be considered insignificant for the purpose of identifying the emissions units in permit applications. Emissions units in this category are not required to be included in permit applications submitted pursuant to Rule 8-5 or Rule 8-7. Insignificant activities falling into this category are listed in Section II A of this appendix.

2. Emissions units with insignificant emissions levels. This category includes emissions units, other than those in Section I A 1 of this appendix, that are deemed insignificant because they have emissions levels sufficiently small so as to be considered insignificant for the purpose of quantifying the emissions from the emissions units in a permit application. Emissions units emitting at these insignificant levels are required to be identified by listing them as insignificant emissions units in the permit application submitted pursuant to Rule 8-5 or Rule 8-7. The list of insignificant emissions units shall also specify the pollutant or pollutants emitted at insignificant emissions levels for each emissions unit on the list. However, information on the amount of emissions from these units is not required to be provided. Insignificant activities in this category are listed in Section II B of this appendix.

II. Insignificant activities.

A. Insignificant emissions units.

1. Gas flares or flares used solely to indicate danger to the public.

2. Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

3. Indoor or outdoor kerosene heaters.

4. Space heaters operating by direct heat transfer, including portable heaters which can reasonably be carried and relocated by an employee.

5. Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens.

6. Interior maintenance activities and the equipment and supplies used to carry out these activities, such as janitorial cleaning products and air fresheners, but not cleaning of production equipment.

7. Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities.

8. Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance.

9. Bathroom and locker room ventilation and maintenance.

10. Copying and duplication activities for internal use and support of office activities at the source.

11. Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

12. Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for human consumption.

13. Laundry operations that service uniforms or other clothing used at industrial facilities.

14. Safety devices, if associated with a permitted emissions source.

15. Air contaminant detectors or recorders, combustion controllers or shutoffs.

16. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

17. Portable generators.

18. The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment.

19. Firefighting equipment and the equipment used to train firefighters.

20. Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities.

21. Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes.

B. Emissions units, other than those listed in Section II A of this appendix, with insignificant emissions levels.

1. Emissions units with uncontrolled emissions of 1 ton per year or less of nitrogen dioxide, sulfur dioxide, particulate matter (PM10), or volatile organic compounds.

2. Emissions units with uncontrolled emissions of 10 tons per year or less of carbon monoxide.

3. Emissions units with uncontrolled emissions of 12 pounds per year or less of lead.

4. Emissions units with uncontrolled emissions of 100 pounds per year or less of any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Emissions units with uncontrolled emissions of hazardous air pollutants or toxic pollutants or both at or below the emissions thresholds in Table W-1.

TABLE W-1
Thresholds for De Minimis Emissions of Hazardous Air Pollutants and Toxic Pollutants

Air Pollutant	Emissions Threshold (pounds per year)
Acrylamide	none
Benzidine	none
Beryllium and beryllium compounds	none
Bis(chloromethyl) ether	none
Total dioxins and furans (includes Dibenzofurans, Dioxins, and 2,3,7,8-Tetrachlorodibenzo-p-dioxin)	none
Hexamethylene-1,6-diisocyanate	none
Hexavalent chromium compounds	none
Hydrazine	none
Mercury and mercury compounds	none
N-Nitrosodimethylamine	none
Zinc compounds and zinc fume or dust	none
Any Table W-2 air pollutant	1.0
Any Table W-3 air pollutant	2.0
Any Table W-4 air pollutant	20.0
Any Table W-5 air pollutant	100.0
Any Table W-6 air pollutant	200.0

Any Table W-7 air pollutant	400.0
Any other toxic or hazardous air pollutant	1000.0

TABLE W-2

Arsenic and arsenic compounds

Asbestos

Cadmium and cadmium compounds

Cobalt and cobalt compounds

Bis(2-ethylhexyl) adipate

1,2-Dibromo-3-chloropropane

Ethylene chlorohydrin

Hexamethylene-1,6-diisocyanate

Methyl isocyanate

Methylene diphenyl diisocyanate (MDI)

Methylenebis (phenylisocyanate)

beta-Napthylamine

2-Nitropropane

2,4-Toluene diisocyanate

Vanadium (fume or dust)

TABLE W-3

Acrolein

o-Anisidine

p-Anisidine

Anthracene

Antimony compounds

Arsine

1, 3-Butadiene

Calcium cyanamide

Chlordane

Chlorine dioxide

2-Chloroacetophenone

Chromium and chromium compounds, except hexavalent chromium

Coal tar pitch volatiles

Diazomethane

Dichloroethyl ether (Bis(2-chloroethyl)ether)

Dimethyl sulfate

4,6-Dinitro-o-cresol, and salts

2,4-Dinitrophenol

1,2-Diphenylhydrazine

Ethylene dibromide (Dibromoethane)

Formaldehyde

Heptachlor

Hexachlorobutadiene

Hexachlorocyclopentadiene

Lead arsenate

Lead and lead compounds

Lindane (all isomers)

Methyl hydrazine

4,4-Methylene bis(2-chloroaniline)

Nickel carbonyl

Nitroglycerin

Parathion

Pentachloronitrobenzene (Quintobenzene)

Pentachlorophenol

p-Phenylenediamine

Phosgene

Phosphine

Phosphorus

Polychlorinated biphenyls (Aroclors)

Polycyclic organic matter

Propoxur (Baygon)

Quinoline

Quinone

Selenium compounds

Silver

1,1,2,2-Tetrachloroethane

2,4-Toluene diamine

Toxaphene (chlorinated camphene)

TABLE W-4

Acrylonitrile

Allyl chloride

Ammonium hydroxide

Biphenyl

n-Butyl alcohol

Calcium oxide

Caprolactum

Chlorine

Copper and copper compounds

Dichlorvos

1,1-Dimethyl hydrazine

2,4-Dinitrotoluene

n-Dioctyl phthalate

Ethylene dibromide (Dibromoethane)

Ethylene imine (Aziridine)

Ethylene oxide

Hydrochloric acid

Hydrogen fluoride (hydrofluoric acid)

Hydroquinone

Maleic anhydride

4,4'-Methylenedianiline

Nickel and nickel compounds, except for nickel carbonyl

Phosphoric acid

beta-Propiolactone

Sulfuric acid

Terephthalic acid

Vinyl chloride

Vinylidene chloride (1,1-Dichloroethylene)

TABLE W-5

Acrylic acid

Barium compounds

Benzyl chloride

Bis(2-ethylhexyl)phthalate (DEHP)

Bromoform

Captan

Carbaryl

Chloroform

Cyanide compounds

Decabromodiphenyl oxide

Dibutylphthalate

1,3-Dichloropropene

Diethyl phthalate

Di(2-Ethylhexyl) phthlate

Dimethyl phthalate

Ethylene dichloride

Manganese compounds

Nitric acid

Nitrobenzene

Phthalic anhydride

1,2-Propylenimine (2-Methyl aziridine)

TABLE W-6

Aluminum (fume or dust)

Aluminum oxide

Aniline

Carbon tetrachloride

2,4-D, salts and esters

Diethanolamine

Epichlorohydrin (1-Chloro-2,3-epoxypropane)

Fine mineral fibers

Furfural

Hexachloroethane

Methoxychlor

Methyl iodide (Iodomethane)

Tetrachloroethylene (Perchloroethylene)

O-Toluidine

1,1,2-Trichloroethane

Vinyl bromide

Zinc (fume or dust)

Zinc compounds

TABLE W-7

Acetic acid

Ammonia

Benzene

Carbon disulfide

Catechol

Cresols/Cresylic acid (isomers and mixture)

o-Cresol, m-Cresol, p-Cresol

N,N-Diethyl aniline (N,N-Dimethylaniline)

Dimethyl formamide

2-Ethoxy ethanol

Ethyl acrylate

Ethylene glycol

Hydrogen sulfide

Isophorone

2-Methoxy ethanol

Methyl bromide (Bromomethane)

Phenol

Pyridine

Trichloroethylene

NOTICE: The form used in administering the Regulations for the Control and Abatement of Air Pollution (Revision JJ – Federal Operating Permits for Stationary Sources) is not being published due to the number of pages; however, the name of the form is listed below. The form is available for public inspection at the State Air Pollution Control Board, 629 East Main Street, Richmond, Virginia, 23240 or at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, 2nd Floor, Room 262, Richmond, Virginia 23219.

Permit Application General Information, Form AOP1 (Revised 10/93)

VA.R. Doc. No. R94-333; Filed December 8 1993, 11:32 a.m.

* * * * * * * * *

Title of Regulation: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision KK - Permit Program Fees for Stationary Sources).**

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Public Hearing Dates:
February 1, 1994 - 8 p.m.
February 3, 1994 - 8 p.m.
February 8, 1994 - 8 p.m.
February 9, 1994 - 8 p.m.
February 10, 1994 - 8 p.m.
Written comments may be submitted until close of business on February 25, 1994.
(See Calendar of Events section for additional information)

Purpose: The purpose of the regulation is to require owners of stationary sources of air pollution to pay permit program fees in order to generate revenue sufficient to cover all reasonable direct and indirect costs of the permit program. The proposal is being promulgated to comply with the permit fee requirements of Title V of the federal Clean Air Act and of § 10.1-1322 of the Code of Virginia.

Substance: The major provisions of the proposal are summarized below.

1. With a few exceptions, annual emissions fees will be assessed against all sources of air pollution subject to Virginia's permit requirements, including small sources receiving state operating permits. Initial bills will be mailed to source owners within 60 days after the effective date of this rule.

2. Sources that began initial operation during the calendar year preceding the year in which the annual fee is assessed will be exempt for that year. No fee will be assessed for that portion of emissions in excess of 4,000 tons per year of any regulated air pollutant.

3. The pollutants subject to the fees are the designated pollutants regulated under New Source Performance Standards (§ 111 of the Clean Air Act), the hazardous pollutants regulated under § 112 of the Clean Air Act, and the criteria pollutants regulated under National Ambient Air Quality Standards (excluding carbon monoxide but including the ozone precursors nitrogen oxides and volatile organic compounds).

4. The costs to be covered by the fees are the reasonable direct and indirect costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

5. The annual permit program fee shall not exceed a base year amount of $25 per ton of actual emissions using 1990 as the base year and shall be adjusted annually by the Consumer Price Index.

Issues: The primary advantages and disadvantages of implementation and compliance with the regulation by the public and the department are discussed below.

1. Public: Permit fees charged for emissions may provide an incentive to stationary sources to keep their emissions as low as possible, thus reducing air pollution, a source of significant damage to health and property. The charging of permit fees also allows the costs of the air quality programs to be paid for directly by those who create the pollution, rather than indirectly through the state taxation system. On the other hand, in order to comply with this regulation, sources will need to invest substantial amounts of money.

2. Department: The regulation will be an advantage to the department because it will provide the necessary funding to develop and operate the permit program and the Small Business Technical and Environmental Compliance Assistance Program. On the other hand, the department will need to acquire additional staff and invest substantial amounts of time and resources in training, enforcement, and other related activities.

Basis: The legal basis for the proposed regulation amendments is the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia), specifically § 10.1-1308 which authorizes the board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Section 10.1-1322 of this same law authorizes the State Air Pollution Control Board to provide for the annual collection of permit program fees from air pollution sources.

Localities Affected: There is no locality which will bear any identified disproportionate material impact due to the proposed regulation which would not be experienced by other localities.

Impact: The cost to the affected entities will vary significantly, increasing in proportion to the amount of pollutant actually emitted. Preliminary estimates show that about two-thirds of Virginia's sources emit 10 tons or less per year, so the annual fee for each of these sources would be $250 or less (plus CPI adjustment and administrative costs). Of the 90 largest sources with emissions subject to fees, preliminary estimates show that the fee range would be approximately $13,000 to $360,000 (plus CPI adjustment and administrative costs).

Preliminary estimates show that the agency's direct and indirect costs for administering the permit program may total approximately $9.3 million. The source of this money must be the fee revenue collected pursuant to the regulation. The other sources of department funds–the general fund and the grant money provided by the U.S. Environmental Protection Agency under § 105 of the federal Clean Air Act–may not be used to carry out this regulation.

Comparison with Federal Requirements: The regulation exceeds the federal mandates for stringency in two provisions. The first provision is in the inclusion of small sources in the list of sources subject to fees. By issuing state operating permits to small sources, the department can help them escape the burden of the Title V permit requirements by limiting their potential to emit. The fees paid by the small sources will defray the cost of issuing these permits.

The second provision is in the collection of fees prior to EPA's approval of the program. The operating permit regulation provides for applications to be submitted to the department between September 15 and November 15, 1994. In order to begin processing these applications upon EPA's approval, the department must hire and train additional staff to be in place by that time. The early collection of fees will allow for the timely hiring of the additional staff.

Location of Proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Department of Environmental Quality
Abingdon Virginia Air Regional Office
121 Russell Road
Abingdon, Virginia 24210
Ph: (703) 676-5482

Department of Environmental Quality
Roanoke Air Regional Office
Executive Office Park, Suite D
5338 Peters Creek Road
Roanoke, Virginia 24019
Ph: (703) 561-7000

Department of Environmental Quality
Lynchburg Air Regional Office
7701-03 Timberlake Road
Lynchburg, Virginia 24502
Ph: (804) 582-5120

Department of Environmental Quality
Fredericksburg Air Regional Office
300 Central Road, Suite B
Fredericksburg, Virginia 22401
Ph: (703) 899-4600

Department of Environmental Quality
Richmond Air Regional Office
Arboretum V, Suite 250
9210 Arboretum Parkway
Richmond, Virginia 23236
Ph: (804) 323-2409

Department of Environmental Quality
Hampton Roads Air Regional Office
Old Greenbrier Village, Suite A
2010 Old Greenbrier Road
Chesapeake, Virginia 23320-2168
Ph: (804) 424-6707

Department of Environmental Quality
Northern Virginia Air Regional Office
Springfield Corporate Center, Suite 310
6225 Brandon Avenue
Springfield, Virginia 22150
Ph: (703) 644-0311

Summary:

The regulation amendments concern provisions covering permit program fees for stationary sources and are summarized below:

1. With a few exceptions, annual emissions fees will be assessed against all sources of air pollution subject to Virginia's permit requirements, including small sources receiving state operating permits. Initial bills will be mailed to source owners within 60 days after the effective date of this rule.

2. Sources that began initial operation during the calendar year preceding the year in which the annual fee is assessed will be exempt for that year. No fee will be assessed for that portion of emissions in excess of 4,000 tons per year of any regulated air pollutant.

3. The pollutants subject to the fees are the designated pollutants regulated under New Source Performance Standards (§ 111 of the Clean Air Act), the hazardous pollutants regulated under § 112 of the Clean Air Act, and the criteria pollutants regulated under National Ambient Air Quality Standards (excluding carbon monoxide but including the ozone precursors nitrogen oxides and volatile organic compounds).

4. The costs to be covered by the fees are the reasonable direct and indirect costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

5. The annual permit program fee shall not exceed a base year amount of $25 per ton of actual emissions using 1990 as the base year and shall be adjusted annually by the Consumer Price Index.

VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision KK - Permit Program Fees for Stationary Sources).

PART VIII.
PERMIT PROGRAM FEES FOR STATIONARY SOURCES (RULE 8-6).

§ 120-08-0601. Applicability.

A. Except as provided in subsection C of this section, the provisions of this rule apply to the following stationary sources:

1. Any major source.

2. Any source, including an area source, subject to the provisions of Parts IV and V adopted pursuant to § 111 of the federal Clean Air Act.

3. Any source, including an area source, subject to the provisions of Part VI adopted pursuant to § 112 of the federal Clean Air Act.

4. Any affected source.

5. Any other source subject to the permit requirements of Rule 8-5 or § 120-08-04.

B. The provisions of this rule apply throughout the Commonwealth of Virginia.

C. The provisions of this rule shall not apply to the

following:

1. All sources and source categories that would be subject to this rule solely because they are subject to the provisions of 40 CFR Part 60, Subpart AAA (standards of performance for new residential wood heaters), as prescribed in Rule 5-5.

2. All sources and source categories that would be subject to this rule solely because they are subject to the provisions of 40 CFR Part 61, Subpart M, § 61.145 (national emission standard for hazardous air pollutants for asbestos, standard for demolition and renovation), as prescribed in Rule 6-1.

3. Any source issued a permit under § 120-08-01, § 120-08-02, or § 120-08-03 that began initial operation during the calendar year preceding the year in which the annual permit program fee is assessed.

4. That portion of emissions in excess of 4,000 tons per year of any regulated air pollutant emitted by any source otherwise subject to an annual permit program fee.

5. During the years 1995 through 1999 inclusive, any affected unit under § 404 of the federal Clean Air Act (phase I sulfur dioxide requirements).

6. Any emissions unit within a stationary source subject to this rule that is identified as being an insignificant activity in Appendix W.

§ 120-08-0602. Definitions.

A. For the purpose of this rule and subsequent amendments or any orders issued by the board, the words or phrases shall have the meaning given them in subsection C of this section.

B. All words and phrases not defined in subsection C of this section shall have the meaning given them in Part I, unless otherwise required by context.

C. Terms defined.

"Actual emissions" means the actual rate of emissions in tons per year of any regulated air pollutant emitted from a source subject to this rule over the preceding calendar year. Actual emissions may be calculated according to any method acceptable to the department and may use the source's actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year.

"Affected source" means a source that includes one or more affected units.

"Affected unit" means a unit that is subject to any federal acid rain emissions reduction requirement or limitation under Title IV of the federal Clean Air Act.

"Area source" means any stationary source that is not a major source. For purposes of this section, the phrase "area source" shall not include motor vehicles or nonroad vehicles.

"Hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable, which causes or contributes to air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, and which is designated as such as Appendix U.

"Major source" means:

a. For hazardous air pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

b. For air pollutants other than hazardous air pollutants, any stationary source that directly emits or has the potential to emit 100 tons per year or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(1) Coal cleaning plants (with thermal dryers);

(2) Kraft pulp mills;

(3) Portland cement plants;

(4) Primary zinc smelters;

(5) Iron and steel mills;

(6) Primary aluminum ore reduction plants;

(7) Primary copper smelters;

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(9) Hydrofluoric, sulfuric, or nitric acid plants;

(10) Petroleum refineries;

(11) Lime plants;

(12) Phosphate rock processing plants;

(13) Coke oven batteries;

(14) Sulfur recovery plants;

(15) Carbon black plants (furnace process);

(16) Primary lead smelters;

(17) Fuel conversion plant;

(18) Sintering plants;

(19) Secondary metal production plants;

(20) Chemical process plants;

(21) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(23) Taconite ore processing plants;

(24) Glass fiber processing plants;

(25) Charcoal production plants;

(26) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(27) All other stationary source categories subject to the provisions of Rule 5-5 or Rule 6-1, but only with respect to those air pollutants that have been regulated for that category.

c. For ozone nonattainment areas, any source with the potential to emit 100 tons per year or more of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons per year or more in areas classified as "serious," 25 tons per year or more in areas classified as "severe," and 10 tons per year or more in areas classified as "extreme"; except that the references in this definition to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding that requirements under § 182(f) of the federal Clean Air Act (NOx requirements for ozone nonattainment areas) do not apply.

"Permit program costs" means all reasonable (direct and indirect) costs required to develop, administer, and enforce the permit program; and to develop and administer the Small Business Technical and Environmental Compliance Assistance Program established pursuant to the provisions of § 10.1-1323 of the Code of Virginia.

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is state and federally enforceable.

"Regulated air pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound.

b. Any pollutant for which an ambient air quality standard has been promulgated except carbon monoxide.

c. Any pollutant subject to any standard promulgated under Parts IV or V as adopted pursuant to the requirements of § 111 of the federal Clean Air Act.

d. Any pollutant subject to a standard promulgated under § 112 (hazardous air pollutants) or other requirements established under § 112 of the federal Clean Air Act, particularly §§ 112(b), 112(d), 112(g)(2), 112(j), and 112(r).

"Stationary source" means any building, structure, facility or installation which emits or may emit any regulated air pollutant. A stationary source shall include all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same persons (or persons under common control), except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., if they have the same two-digit code) as described in the Standard Industrial Classification Manual (see Appendix M).

§ 120-08-0603. General.

A. The owner of any source subject to this rule shall pay an annual permit program fee.

B. Permit program fees collected pursuant to this rule for sources subject to Rule 8-5 shall not be used for any purpose other than as provided in Title V of the federal Clean Air Act and associated regulations and policies.

§ 120-08-0604. Annual permit program fee calculation.

A. The annual permit program fee shall not exceed a

base year amount of $25 per ton using 1990 as the base year and shall be adjusted annually by the Consumer Price Index.

1. The annual permit program fee shall be increased (consistent with the need to cover reasonable costs) each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

2. The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

B. The annual permit program fee shall be set at a level which allows the department to collect an amount approximately equal to but not greater than the estimated permit program costs. This amount shall be calculated annually by the department and may vary depending on income and expenses.

C. The annual permit program fee for each fiscal year shall be based on the actual emissions of each regulated air pollutant emitted by the source during the preceding calendar year. Such emissions shall be determined in a manner acceptable to the department.

§ 120-08-0605. Annual permit program fee payment.

A. Upon determining that the owner owes an annual permit program fee, the department shall mail a bill for the fee to that owner no later than June 1, or in the case of the initial bill no later than 60 days after the effective date of this rule.

B. Within 30 days following the date of the postmark on the bill, the owner shall respond in one of the following ways:

1. The owner may pay the fee in full. The fee shall be paid by check or money order made payable to "Treasurer of Virginia."

2. The owner may make a written request to the department to authorize an alternative payment schedule. The deadline for payment of the fee shall be held in abeyance pending the department's response.

C. Failure of the owner to respond within 90 days following the date of the postmark on the bill in one of the two ways specified in subsection B of this section shall be grounds to institute a collection action against the owner by the Attorney General or to initiate appropriate enforcement action as provided in the Virginia Air Pollution Control Law.

APPENDIX U
HAZARDOUS AIR POLLUTANTS

I. General.

A. Section II designates hazardous air pollutants for the purposes of Rules 8-5 and 8-6.

B. The number to the left of each chemical name in section II of this appendix is the Chemical Abstract Service (CAS) number for that substance. Chemical names not indicating a unique substance have not been assigned CAS numbers (compounds, coke oven emissions, glycol ethers, fine mineral fibers, polycyclic organic matter, and radionuclides). The definitions of glycol ethers and all chemical compounds (unless otherwise specified) include any unique substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of the structure of that substance.

II. List of hazardous air pollutants.

75070 Acetaldehyde

60355 Acetamide

75058 Acetonitrile

98862 Acetophenone

53963 2-Acetylaminofluorene

107028 Acrolein

79061 Acrylamide

79107 Acrylic acid

107131 Acrylonitrile

107051 Allyl chloride

92671 4-Aminobiphenyl

62533 Aniline

90040 o-Anisidine

1332214 Asbestos

71432 Benzene (including benzene from gasoline)

92875 Benzidine

98077 Benzotrichloride

100447 Benzyl chloride

92524 Biphenyl

117817 Bis(2-ethylhexyl)phthalate (DEHP)

542881 Bis(chloromethyl)ether

75252 Bromoform

106990 1,3-Butadiene

156627 Calcium cyanamide

105602 Caprolactam

133062 Captan

63252 Carbaryl

75150 Carbon disulfide

56235 Carbon tetrachloride

463581 Carbonyl sulfide

120809 Catechol

133904 Chloramben

57749 Chlordane

7782505 Chlorine

79118 Chloroacetic acid

532274 2-Chloroacetophenone

108907 Chlorobenzene

510156 Chlorobenzilate

67663 Chloroform

107302 Chloromethyl methyl ether

126998 Chloroprene

1319773 Cresols/Cresylic acid (isomers and mixture)

95487 o-Cresol

108394 m-Cresol

106445 p-Cresol

98828 Cumene

94757 2,4-D, salts and esters

3547044 DDE

334883 Diazomethane

132649 Dibenzofurans

96128 1,2-Dibromo-3-chloropropane

84742 Dibutylphthalate

106467 1,4-Dichlorobenzene(p)

91941 3,3-Dichlorobenzidene

111444 Dichloroethyl ether (Bis(2-chloroethyl)ether)

542756 1,3-Dichloropropene

62737 Dichlorvos

111422 Diethanolamine

121697 N,N-Diethyl aniline (N,N-Dimethylaniline)

64675 Diethyl sulfate

119904 3,3-Dimethoxybenzidine

60117 Dimethyl aminoazobenzene

119937 3,3'-Dimethyl benzidine

79447 Dimethyl carbamoyl chloride

68122 Dimethyl formamide

57147 1,1-Dimethyl hydrazine

131113 Dimethyl phthalate

77781 Dimethyl sulfate

534521 4,6-Dinitro-o-cresol, and salts

51285 2,4-Dinitrophenol

121142 2,4-Dinitrotoluene

123911 1,4-Dioxane (1,4-Diethyleneoxide)

122667 1,2-Diphenylhydrazine

106898 Epichlorohydrin (1-Chloro-2,3-epoxypropane)

106887 1,2-Epoxybutane

140885 Ethyl acrylate

100414 Ethyl benzene

51796 Ethyl carbamate (Urethane)

75003 Ethyl chloride (Chloroethane)

106934 Ethylene dibromide (Dibromoethane)

107062 Ethylene dichloride (1,2-Dichloroethane)

107211 Ethylene glycol

151564 Ethylene imine (Aziridine)

75218 Ethylene oxide

96457 Ethylene thiourea

75343 Ethylidene dichloride (1,1-Dichloroethane)

50000 Formaldehyde

76448 Heptachlor

118741 Hexachlorobenzene

87683 Hexachlorobutadiene

77474 Hexachlorocyclopentadiene

67721 Hexachloroethane

822060 Hexamethylene-1,6-diisocyanate

680319 Hexamethylphosphoramide

110543 Hexane

302012 Hydrazine

7647010 Hydrochloric acid

7664393 Hydrogen fluoride (hydrofluoric acid)

7783064 Hydrogen sulfide

123319 Hydroquinone

78591 Isophorone

58899 Lindane (all isomers)

108316 Maleic anhydride

67561 Methanol

72435 Methoxychlor

74839 Methyl bromide (Bromomethane)

74873 Methyl chloride (Chloromethane)

71556 Methyl chloroform (1,1,1-Trichloroethane)

78933 Methyl ethyl ketone (2-Butanone)

60344 Methyl hydrazine

74884 Methyl iodide (Iodomethane)

108101 Methyl isobutyl ketone (Hexone)

624839 Methyl isocyanate

80626 Methyl methacrylate

1634044 Methyl tert butyl ether

101144 4,4-Methylene bis(2-chloroaniline)

75092 Methylene chloride (Dichloromethane)

101688 Methylene diphenyl diisocyanate (MDI)

101779 4,4'-Methylenedianiline

91203 Naphthalene

98953 Nitrobenzene

92933 4-Nitrobiphenyl

100027 4-Nitrophenol

79469 2-Nitropropane

684935 N-Nitroso-N-methylurea

62759 N-Nitrosodimethylamine

59892 N-Nitrosomorpholine

56382 Parathion

82688 Pentachloronitrobenzene (Quintobenzene)

87865 Pentachlorophenol

108952 Phenol

106503 p-Phenylenediamine

75445 Phosgene

7803512 Phosphine

7723140 Phosphorus

85449 Phthalic anhydride

1336363 Polychlorinated biphenyls (Aroclors)

1120714 1,3-Propane sultone

57578 beta-Propiolactone

123386 Propionaldehyde

114261 Propoxur (Baygon)

78875 Propylene dichloride (1,2-Dichloropropane)

75569 Propylene oxide

75558 1,2-Propylenimine (2-Methyl aziridine)

91225 Quinoline

106514 Quinone

100425 Styrene

96093 Styrene oxide

1746016 2,3,7,8-Tetrachlorodibenzo-p-dioxin

79345 1,1,2,2-Tetrachloroethane

127184 Tetrachloroethylene (Perchloroethylene)

7550450 Titanium tetrachloride

108883 Toluene

95807 2,4-Toluene diamine

584849 2,4-Toluene diisocyanate

95534 0-Toluidine

8001352 Toxaphene (chlorinated camphene)

120821 1,2,4-Trichlorobenzene

79005 1,1,2-Trichloroethane

79016 Trichloroethylene

95954 2,4,5-Trichlorophenol

88062 2,4,6-Trichlorophenol

121448 Triethylamine

1582098 Trifluralin

540841 2,2,4-Trimethylpentane

108054 Vinyl acetate

593602 Vinyl bromide

75014 Vinyl chloride

75354 Vinylidene chloride (1,1-Dichloroethylene)

1330207 Xylenes (isomers and mixture)

95476 0-Xylenes

108383 m-Xylenes

106423 p-Xylenes

Antimony compounds

Arsenic compounds (inorganic including arsine)

Beryllium compounds

Cadmium compounds

Chromium compounds

Cobalt compounds

Coke oven emissions

Cyanide compounds [1]

Glycol ethers [2]

Lead compounds

Manganese compounds

Mercury compounds

Fine mineral fibers [3]

Nickel compounds

Polycyclic organic matter [4]

Radionuclides (including radon)

Selenium compounds

.....

[1] X'CN where X = H' or any other group where a formal dissociation may occur; for example, KCN or Ca(CN)2.

[2] Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH2CH2)n-OR' where

n = 1, 2, or 3

R = alkyl or aryl groups

R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH2CH)n-OH. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral-derived fibers) of average diameter one micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100° C.

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APPENDIX W
INSIGNIFICANT ACTIVITIES

I. General.

A. For the purposes of Rules 8-5, 8-6 and 8-7, insignificant activities shall be those activities listed in Section II of this appendix. There are two categories of

insignificant activities as follows:

1. Insignificant emissions units. This category includes emissions units that are deemed insignificant because they are sufficiently small so as to be considered insignificant for the purpose of identifying the emissions units in permit applications. Emissions units in this category are not required to be included in permit applications submitted pursuant to Rule 8-5 or Rule 8-7. Insignificant activities falling into this category are listed in Section II A of this appendix.

2. Emissions units with insignificant emissions levels. This category includes emissions units, other than those in Section I A 1 of this appendix, that are deemed insignificant because they have emissions levels sufficiently small so as to be considered insignificant for the purpose of quantifying the emissions from the emissions units in a permit application. Emissions units emitting at these insignificant levels are required to be identified by listing them as insignificant emissions units in the permit application submitted pursuant to Rule 8-5 or Rule 8-7. The list of insignificant emissions units shall also specify the pollutant or pollutants emitted at insignificant emissions levels for each emissions unit on the list. However, information on the amount of emissions from these units is not required to be provided. Insignificant activities in this category are listed in Section II B of this appendix.

II. Insignificant activities.

A. Insignificant emissions units.

1. Gas flares or flares used solely to indicate danger to the public.

2. Comfort air conditioning or ventilation systems not used to remove air contaminants generated by or released from specific units of equipment.

3. Indoor or outdoor kerosene heaters.

4. Space heaters operating by direct heat transfer, including portable heaters which can reasonably be carried and relocated by an employee.

5. Office activities and the equipment and implements used to carry out these activities, such as typewriters, printers, and pens.

6. Interior maintenance activities and the equipment and supplies used to carry out these activities, such as janitorial cleaning products and air fresheners, but not cleaning of production equipment.

7. Architectural maintenance and repair activities conducted to take care of the buildings and structures at the facility, including repainting, reroofing and sandblasting, where no structural repairs are made in conjunction with the installation of new or permanent facilities.

8. Exterior maintenance activities conducted to take care of the grounds of the source, including lawn maintenance.

9. Bathroom and locker room ventilation and maintenance.

10. Copying and duplication activities for internal use and support of office activities at the source.

11. Blueprint copiers and photographic processes used as an auxiliary to the principal equipment at the source.

12. Equipment on the premises of industrial and manufacturing operations used solely for the purpose of preparing food for human consumption.

13. Laundry operations that service uniforms or other clothing used at industrial facilities.

14. Safety devices, if associated with a permitted emissions source.

15. Air contaminant detectors or recorders, combustion controllers or shutoffs.

16. Brazing, soldering or welding equipment used as an auxiliary to the principal equipment at the source.

17. Portable generators.

18. The engine of any vehicle, including but not limited to any marine vessel, any vehicle running upon rails or tracks, any motor vehicle, any forklift, any tractor, or any mobile construction equipment.

19. Firefighting equipment and the equipment used to train firefighters.

20. Laboratories used solely for the purpose of quality control or environmental compliance testing that are associated with manufacturing, production or other industrial or commercial facilities.

21. Laboratories in primary and secondary schools and in schools of higher education used for instructional purposes.

B. Emissions units, other than those listed in Section II A of this appendix, with insignificant emissions levels.

1. Emissions units with uncontrolled emissions of one ton per year or less of nitrogen dioxide, sulfur dioxide, particulate matter (PM10), or volatile organic compounds.

2. Emissions units with uncontrolled emissions of 10

tons per year or less of carbon monoxide.

3. Emissions units with uncontrolled emissions of 12 pounds per year or less of lead.

4. Emissions units with uncontrolled emissions of 100 pounds per year or less of any Class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act concerning stratospheric ozone protection.

5. Emissions units with uncontrolled emissions of hazardous air pollutants or toxic pollutants or both at or below the emissions thresholds in Table W-1.

TABLE W-1
Thresholds for De Minimis Emissions of Hazardous Air Pollutants and Toxic Pollutants

Air Pollutant	Emissions Threshold (pounds per year)
Acrylamide	none
Benzidine	none
Beryllium and beryllium compounds	none
Bis(chloromethyl) ether	none
Total dioxins and furans (includes Dibenzofurans, Dioxins, and 2,3,7,8-Tetrachlorodibenzo-p-dioxin)	none
Hexamethylene-1,6-diisocyanate	none
Hexavalent chromium compounds	none
Hydrazine	none
Mercury and mercury compounds	none
N-Nitrosodimethylamine	none
Zinc compounds and zinc fume or dust	none
Any Table W-2 air pollutant	1.0
Any Table W-3 air pollutant	2.0
Any Table W-4 air pollutant	20.0
Any Table W-5 air pollutant	100.0
Any Table W-6 air pollutant	200.0
Any Table W-7 air pollutant	400.0
Any other toxic or hazardous air pollutant	1000.0

TABLE W-2

Arsenic and arsenic compounds

Asbestos

Cadmium and cadmium compounds

Cobalt and cobalt compounds

Bis(2-ethylhexyl) adipate

1,2-Dibromo-3-chloropropane

Ethylene chlorohydrin

Hexamethylene-1,6-diisocyanate

Methyl isocyanate

Methylene diphenyl diisocyanate (MDI)

Methylenebis (phenylisocyanate)

beta-Napthylamine

2-Nitropropane

2,4-Toluene diisocyanate

Vanadium (fume or dust)

TABLE W-3

Acrolein

o-Anisidine

p-Anisidine

Anthracene

Antimony compounds

Arsine

1, 3-Butadiene

Calcium cyanamide

Chlordane

Chlorine dioxide

2-Chloroacetophenone

Chromium and chromium compounds, except hexavalent chromium

Coal tar pitch volatiles

Diazomethane

Dichloroethyl ether (Bis(2-chloroethyl)ether)

Dimethyl sulfate

4,6-Dinitro-o-cresol, and salts

2,4-Dinitrophenol

1,2-Diphenylhydrazine

Ethylene dibromide (Dibromoethane)

Formaldehyde

Heptachlor

Hexachlorobutadiene

Hexachlorocyclopentadiene

Lead arsenate

Lead and lead compounds

Lindane (all isomers)

Methyl hydrazine

4,4-Methylene bis(2-chloroaniline)

Nickel carbonyl

Nitroglycerin

Parathion

Pentachloronitrobenzene (Quintobenzene)

Pentachlorophenol

p-Phenylenediamine

Phosgene

Phosphine

Phosphorus

Polychlorinated biphenyls (Aroclors)

Polycyclic organic matter

Propoxur (Baygon)

Quinoline

Quinone

Selenium compounds

Silver

1,1,2,2-Tetrachloroethane

2,4-Toluene diamine

Toxaphene (chlorinated camphene)

TABLE W-4

Acrylonitrile

Allyl chloride

Ammonium hydroxide

Biphenyl

n-Butyl alcohol

Calcium oxide

Caprolactum

Chlorine

Copper and copper compounds

Dichlorvos

1,1-Dimethyl hydrazine

2,4-Dinitrotoluene

n-Dioctyl phthalate

Ethylene dibromide (Dibromoethane)

Ethylene imine (Aziridine)

Ethylene oxide

Hydrochloric acid

Hydrogen fluoride (hydrofluoric acid)

Hydroquinone

Maleic anhydride

4,4'-Methylenedianiline

Nickel and nickel compounds, except for nickel carbonyl

Phosphoric acid

beta-Propiolactone

Sulfuric acid

Terephthalic acid

Vinyl chloride

Vinylidene chloride (1,1-Dichloroethylene)

TABLE W-5

Acrylic acid

Barium compounds

Benzyl chloride

Bis(2-ethylhexyl)phthalate (DEHP)

Bromoform

Captan

Carbaryl

Chloroform

Cyanide compounds

Decabromodiphenyl oxide

Dibutylphthalate

1,3-Dichloropropene

Diethyl phthalate

Di(2-Ethylhexyl) phthlate

Dimethyl phthalate

Ethylene dichloride

Manganese compounds

Nitric acid

Nitrobenzene

Phthalic anhydride

1,2-Propylenimine (2-Methyl aziridine)

TABLE W-6

Aluminum (fume or dust)

Aluminum oxide

Aniline

Carbon tetrachloride

2,4-D, salts and esters

Diethanolamine

Epichlorohydrin (1-Chloro-2,3-epoxypropane)

Fine mineral fibers

Furfural

Hexachloroethane

Methoxychlor

Methyl iodide (Iodomethane)

Tetrachloroethylene (Perchloroethylene)

O-Toluidine

1,1,2-Trichloroethane

Vinyl bromide

Zinc (fume or dust)

Zinc compounds

TABLE W-7

Acetic acid

Ammonia

Benzene

Carbon disulfide

Catechol

Cresols/Cresylic acid (isomers and mixture)

o-Cresol, m-Cresol, p-Cresol

N,N-Diethyl aniline (N,N-Dimethylaniline)

Dimethyl formamide

2-Ethoxy ethanol

Ethyl acrylate

Ethylene glycol

Hydrogen sulfide

Isophorone

2-Methoxy ethanol

Methyl bromide (Bromomethane)

Phenol

Pyridine

Trichloroethylene

VA.R. Doc. No. R94-332; Filed December 8, 1993, 11:23 a.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Title of Regulation: **VR 155-01-3. Public Participation**

Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-2602 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information.)

Basis: Section 54.1-2400 establishes the general powers and duties of the Board of Audiology and Speech-Language Pathology which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

a. The process and content required for petitions for rulemaking.

b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.

b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.

c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Audiology and Speech-Language Pathology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.

VR 155-01-3. Public Participation Guidelines.

PART I.
GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Audiology and Speech-Language Pathology. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. Definitions.

The following words and 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.

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

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

PART II.
MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.

2. A Notice of Comment Period.

3. A copy of any final regulation adopted by the board.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV.
ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R94-305; Filed December 2, 1993, 2:44 p.m.

DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

REGISTRAR'S NOTICE: Due to its length, the proposed regulation filed by the Department of Criminal Justice Services 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, Virginia Code Commission, 910 Capitol Square, Room 262, Richmond, VA 23219, and at the Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219. Copies of the regulation may be obtained from the Department of Criminal Justice Services, telephone (804) 786-4000.

Title of Regulation: **VR 240-03-2. Regulations Relating to Private Security Services.**

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

Public Hearing Date: April 6, 1994 - 9 a.m.
Written comments may be submitted until March 1, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-182 of the Code of Virginia empowers the Criminal Justice Services Board to promulgate regulations relating to private security services.

Purpose: The purpose of these regulations is to set forth a regulatory program which mandates and prescribes standards, requirements, and procedures that best serves to protect the public safety and welfare from unqualified, unscrupulous, and incompetent persons engaged in the activities of private security services.

Substance: The essential components of these regulations address the administration, operation, and licensure of private security services businesses; establish methods,

standards, and procedures for the training, certification, and registration of private security services personnel; and set forth standards of conduct and prohibited practices.

Issues: The key advantages that these regulations provide to the general public are: (i) they set forth standards, procedures, and requirements that serve to protect the safety and welfare of the general public from deceptive or misleading private security services business practitioners; and (ii) they secure the public safety and welfare against incompetent, unscrupulous, and unqualified persons by establishing methods of certification and registration that serve to assure the competency of persons performing or engaged in the activities of private security services.

Estimated Impact:

A. Projected Number of Persons Affected: These regulations will affect all private security services businesses which provide or request to provide private security services within the Commonwealth. Currently, there are approximately 485 such businesses. Each business must have at least one compliance agent. Some businesses have two or more compliance agents. The estimated number of compliance agents projected to be affected is 535.

These regulations will also affect certified private security services training schools and persons who have been approved to instruct in such schools. Each school must have a director. Currently, there are 95 certified private security services training schools and approximately 350 certified private security services instructors.

Additionally, these regulations will affect each employee of a private security services business that is employed as a guard, private investigator or private detective, guard dog handler, or armored car personnel. The total number of persons in the above referenced categories is estimated to be approximately 10,500. The total projected number of persons who will be affected by these regulations is estimated to be 11,915. These regulations will likewise affect an unknown number of persons who complete private security services training but are not employed by a private security services business.

B. Projected Cost: The private security services program is a special funded program. It receives no moneys from the general fund. The program source of revenue is derived from fees paid by the private security industry for administering and processing applications for licensing, registrations, certifications and other administrative requests for services. The projected costs associated with the implementation of these regulations are indicated below:

Projected Cost For Implementation: Emergency regulations set forth by the Criminal Justice Services Board implemented the private security services program on July 1, 1993. The cost associated with the implementation of the emergency regulation was approximately $400,000. A projected budget which represents the agency's best estimate of the costs associated with the implementation of the emergency regulations and these proposed regulations has been developed and is on file with the department. The projected cost associated with the implementation of these proposed regulations is negligible.

Projected Cost for Compliance: Audits, training inspections, and compliance investigations are integral components of these regulations. To perform these functions, statewide travel is anticipated for three full-time employees (FTE'S). Travel costs may include lodging, meals, and automobile expenses. Projected annual cost for travel to assure compliance is estimated to be approximately $21,600.

Additionally, projected cost associated with compliance may include the costs associated with the adjudication process. Such costs may include hearing officer or attorney fees, court reporter, and service of process. This cost is not expected to exceed $11,000 annually. The projected annual cost for compliance is $110,000.

Summary:

The proposed regulations set forth a regulatory program that protects the public from unscrupulous, incompetent or unqualified persons engaging in the activities of private security services, and prescribe standards and procedures to guide the department and inform the general public of the methods, process, and requirements relating to the administration, operation, licensing, registration, training, and certification of persons engaged in the activities of private security services.

The proposed regulations establish methods, procedures, and requirements for obtaining a private security services business license, a private security services registration or a training certification. Additionally, these regulations set forth training standards and the requirements relating to administering and conducting private security services training.

Essentially, these regulations address the operation, administration and licensure procedures concerning private security businesses; establish methods, standards, and procedures for training, registration, or certification of private security services business personnel; and set forth standards of conduct and prohibited practices for persons engaged in the activities of private security services.

VA.R. Doc. No. R94-341; Filed December 8, 1993, 11:59 a.m.

STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: **VR 275-00-1.** *Public Participation* **Guidelines ~~for the Development and Promulgation of Regulations~~ .**

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis: Section 9-6.14:7.1 of the Code of Virginia requires that agencies develop public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. Virginia Student Assistance Authorities is comprised of the State Education Assistance Authority and the Virginia Education Loan Authority. The regulations are promulgated by the State Education Assistance Authority in its function as a student loan guarantor under the statutory authority of § 23-38.33:1 C 7 of the Code of Virginia.

Purpose: The proposed regulations are intended to finalize emergency regulations promulgated on June 30, 1993. The amendments address methods for the identification and notification of interested parties, and any specific means of seeking input from persons or groups which the authority intends to use.

Substance: Guidelines have been updated to identify specific public participation procedures. These procedures include obtaining approval from the authority's Board of Directors before proceeding with publication of proposed regulations. The guidelines provide for the publication of a Notice of Intended Regulatory Action in both The Virginia Register and the authority's newsletter.

The guidelines allow a hearing to be held under the following circumstances: (i) the authority elects to hold a public hearing; (ii) the Governor directs that a hearing be held; or (iii) if at least 25 persons request a public hearing.

Also, a School/Lender Advisory Board provides guidance to the authority on general and specific policies and operational requirements which impact school and lender administration of the student loan program.

The Public Participation Guidelines also address how the authority will go about obtaining public comment and discusses where notices will be published.

Issues: The proposed PPG's will assist the public in providing greater input into the development of the authority's regulations by better meeting the public's need for knowledge regarding the regulatory process.

Estimated Impact: The SEAA serves Virginia students, approximately 125 Virginia schools and approximately 150 lenders. In addition, out-of-state students attending Virginia schools may use SEAA's guarantee as may Virginia students attending out-of-state schools. However, the vast majority of the SEAA's loan volume represents Virginia students attending Virginia schools. Since the proposed regulations contain the same language as the emergency regulations currently in effect, there will be no additional costs to the authority in the implementation and compliance of this regulation.

These regulations should impose no costs upon borrowers, or schools and lenders.

Summary:

The proposed regulations seek to finalize emergency regulations promulgated on June 30, 1993. The amendments address methods for the identification and notification of interested parties, and any specific means of seeking input from persons or groups which the authority intends to use in addition to the Notice of Intended Regulatory Action.

The amendments provide for the use of a standing advisory board and consultation with groups and individuals registering interest in working with the agency. The amendments address the circumstances in which the agency will utilize recommendations from advisory groups or other interested parties.

Preamble:

The General Assembly, at its 1993 Session, adopted a comprehensive revision of procedures for the promulgation of regulations by the administrative agencies or political subdivisions of the Commonwealth of Virginia. It is the intent of the State Education Assistance Authority to comply with the applicable provisions of the Code of Virginia and regulations of the Commonwealth for the development and promulgation of regulations by the Authority.

VR 275-00-1. Public Participation Guidelines.

§ 1. Definitions.

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

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

"Authority" means the State Education Assistance Authority.

"Board of Directors" means the Board of Directors of the State Education Assistance Authority.

§ 2. Public participation procedures.

In order to comply with the ~~APA~~ *Administrative Process Act* the authority agrees to adhere to the following steps for the adoption, amendment and repeal of regulations:

1. The authority will obtain approval from the Board of Directors to proceed with publication of proposed regulations.

~~1.~~ *2.* The authority will first publish a ~~notice of proposed action~~ *Notice of Intended Regulatory Action* in The Virginia Register and in the authority's newsletter ; ~~the SEAALINE, in order to give the public an opportunity to comment on the proposal and on the text of the proposed regulations. These comments may be accepted orally or in writing.~~ *in order to alert interested individuals or groups of the purpose of the regulatory action and allow them at least 30 days to provide input by submitting oral or written comments to the authority. If required, this Notice of Intended Regulatory Action shall state whether or not the authority intends to hold a public hearing on the proposed regulations. If the authority elects not to hold a public hearing, a hearing will be held if the Governor directs that a hearing be held or if at least 25 persons request a public hearing.* The SEAA *School/Lender* Advisory Board, ~~comprising~~ *consisting of* a representative sample of individuals from various types and sizes of participating schools and lenders, may also be utilized for input at this stage of ~~regulation~~ *regulatory* development. *This advisory board provides the authority guidance on general and specific policies and operational requirements impacting school and lender administration of the student loan program. The authority will consider recommendations from this board in advance of any Notice of Intended Regulatory Action. Interested representatives of other state agencies or other citizens may participate in advisory board meetings held by the authority.*

~~2.~~ *3.* ~~Sixty days prior to action on the proposal, the authority will publish a notice of comment period and a notice of public hearing (scheduled no sooner than 60 days after the publication date) in~~ *No earlier than 30 days following publication of the Notice of Intended Regulatory Action the authority will publish a notice to obtain public comments. The notice to obtain public comment will be published in the following:* The Virginia Register *of Regulations* , ~~in~~ a newspaper *in general circulation* in the state capital (for which the Registrar *of Regulations* will coordinate and publish the needed information), ~~in~~ the ~~SEAALINE~~ *authority's newsletter* or a letter *to Virginia schools and lenders participating in the authority's loan programs, and other interested parties as determined by the authority.* ~~addressing those on the SEAALINE address list (comprising participating lenders, schools and other interested parties), and in any other media the authority deems appropriate, requesting comments in writing or at the public hearing.~~ *At the authority's discretion, it may publish the notice for public comments in newspapers outside the state capital and issue press releases or other media notices. The public comment period will conclude no earlier than 60 days following the publication of the notice for comments.*

~~During this time, the Governor and the General Assembly will review the proposed regulations. Upon receipt of the Governor's comments on a proposed regulation, the authority may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions; or (iii) adopt the regulation without changes despite the Governor's recommendations for change. Within 21 days after receipt by the authority of a legislative objection, the authority will file a response with the Registrar, the objecting legislative Committee, and the Governor.~~

~~3. At the end of the 60 days of public comment period, the authority will conduct a public hearing for final public comments before final action is taken.~~

4. ~~When~~ *After* final action is taken ~~upon~~ *by* the ~~Board's~~ *Board of Directors, a copy of the final regulations will be submitted to the Registrar of Regulations for publication as soon as practicable. All changes to the proposed regulations shall be highlighted in the final regulations and substantial changes shall be explained. Once published by the Registrar, the regulations shall be effective no earlier than 30 days after publication or at a later date specified by the authority.* ~~vote for adoption of the regulation, the authority will again publish the text of the regulation as adopted, highlighting and explaining any substantial changes in the final regulation, at which time, a 30-day final adoption period will begin. During this time, the Governor will review the final regulation and forward any objections to the authority and the Registrar. If the Governor finds that changes made to the proposed regulation are substantial, he may suspend the regulatory process for an additional 30 days and require the authority to solicit additional public comments on the substantial changes.~~

~~5. A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any later date specified by the authority, 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 21-day extension period; or (ii) the Governor exercises his authority to suspend the regulatory process for the solicitation of additional public comment, in which event, unless withdrawn, the regulation becomes effective on the date specified which shall be after the period for which the Governor has suspended the regulatory process. Upon adoption of the regulation, the authority will submit to the Registrar of Regulations:~~

~~a. A copy of the final regulation with substantial changes highlighted and explained.~~

~~b. A current statement of basis, purpose, and impact.~~

~~c. A summary of public comments and the authority's reply to those comments.~~

~~d. A statement of any special effective or termination dates.~~

~~e. A signed statement that regulations are full, true, and correctly dated.~~

~~f. A statement of prior regulations repealed, modified, or supplemented (optional).~~

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

~~If the authority determines that an emergency situation exists, it will request the Governor's approval to issue an emergency regulation. The regulation becomes operative upon its adoption and filing with the Registrar of Regulations. Emergency regulations are limited in time to 12 months unless a later date is specified and will be published as quickly as possible in the Register. During the time that the emergency status is in effect, the authority may take action to adopt the regulations as permanent through the usual procedures.~~

VA.R. Doc. No. R94-334; Filed December 8, 1993, 11:34 a.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: **VR 320-01-5. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-2803 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information.)

Basis: Sections 54.1-2400 and 54.1-2803 of the Code of Virginia establish the general powers and duties of the Board of Funeral Directors and Embalmers which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

a. The process and content required for petitions for rulemaking.

b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.

b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.

c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Funeral Directors and Embalmers. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.

VR 320-01-5. Public Participation Guidelines.

PART I.
GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Funeral Directors and Embalmers. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. Definitions.

The following words and 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.

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

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

PART II.
MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.

2. A Notice of Comment Period.

3. A copy of any final regulation adopted by the board.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV.
ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R94-306; Filed December 2, 1993, 2:40 p.m.

DEPARTMENT OF LABOR AND INDUSTRY

Title of Regulation: **VR 425-01-100. Public Participation Guidelines.**

Statutory Authority: §§ 9-1.14:7.1 and 40.1-6 of the Code of Virginia.

Public Hearing Date: February 2, 1994 - 10 a.m.
Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis: The statutory authority for promulgating this regulation is Title 40.1 of the Code of Virginia. Section 40.1-6 (3) defines the authority of the commissioner to "make such rules and regulations as may be necessary for the enforcement of Title 40.1, and procedural rules as are required to comply with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596)." Section 9-6.14:7.1 of the Administrative Process Act requires the department to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations.

Purpose: The purpose of these Public Participation Guidelines is to ensure that the public and all parties interested in regulations adopted by the commissioner have a full and fair opportunity to participate as regulations are considered and adopted, in compliance with the Virginia Administrative Process Act and Executive Order Number Twenty-three (90) (Revised).

Substance The regulation defines appropriate terms, and identifies the major groups interested in the regulatory process of the department. It describes the specific manner by which the public will be involved in the formulation of regulations, by offering petitions to develop or amend regulations. The regulation provides for the formation of ad hoc advisory groups, and identifies when they may be used. The regulation describes how open meetings may be used to receive views and comments and answer questions from the public.

The regulation also specifies how and to whom a Notice of Intended Regulatory Action will be issued. It sets out the procedures for submitting the proposed regulations to the appropriate offices of the Executive Branch and the Office of the Attorney General. The regulation details how a 60-day public comment period is established, and how a public hearing is conducted. The regulation provides that a summary of all public comments received will be provided to those who commented. It describes how a regulation will be adopted by the Commissioner.

Issues: The provisions of this regulation provide substantial and substantive opportunities for comment by the public on regulations under consideration by the Commissioner of the Department of Labor and Industry. They also afford an opportunity for the public to offer regulations for possible adoption. A disadvantage is that additional procedures may extend the length of time necessary for a regulation to be adopted. This is outweighed by the advantages of having regulations which have been fully and fairly scrutinized and commented upon by the public. Another advantage is the opportunity for interested parties to participate in the development of regulations that are adopted by the commissioner.

Estimated Impact: Persons affected include approximately 139,812 private sector employers and the 2,213,225 employees of these employers. Expected costs of compliance with this regulation by the regulated community are nil. Estimated costs for the department to implement the regulation are $2,700 for mailing, newspaper advertisements, and conducting open meetings and hearings, for each regulation proposed or amended by the department which is subject to the Administrative Process Act. There are no localities which will be particularly affected by this regulation.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Department of Labor and Industry's Commissioner on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the commissioner June 24, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Department of Labor and Industry to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Department of Labor and Industry (department) set out procedures to be followed by the department which ensure that the public and all parties interested in regulations adopted by the commissioner have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the

formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the commissioner which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

VR 425-01-100. Public Participation Guidelines.

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:

"Ad hoc advisory group" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the commissioner on particular issues under consideration for regulation.

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

"Commissioner" means the Commissioner of Labor and Industry or his designee.

"Department" means the Virginia Department of Labor and Industry.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Open meeting" means an informal meeting to provide an opportunity for the commissioner or his designee to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the department. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the commissioner in accordance with the authority conferred upon him by applicable basic law.

"Secretary" means the Secretary of Commerce and Trade or his designee.

PART II.
GENERAL INFORMATION.

§ 2.1. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are administered by the Commissioner of Labor and Industry, hereafter referred to as commissioner. They shall not apply to regulations adopted on an emergency basis. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

§ 2.2. Purpose.

The purpose of these guidelines is to ensure that the public and all parties interested in the regulations have a full and fair opportunity to participate at every stage in the development or revision of the regulations.

The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

At the discretion of the commissioner, the procedures in Part III may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

§ 2.3. Identification of interested persons and groups.

The major groups interested in the regulatory process of the commissioner are:

1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;

2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and

3. Persons or groups who have asked to be placed on a mailing list.

§ 2.4. Public involvement with formulation of regulations.

A. The commissioner shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The commissioner shall consider the petition and provide a response within 180 days.

B. The petition, at a minimum, shall contain the following information:

1. Name, mailing address and telephone number of petitioner;

2. Petitioner's interest in the proposed action;

3. Recommended regulation or addition, deletion or amendment to a specific regulation;

4. Statement of need and justification for the proposed action;

5. Statement of impact on the petitioner and other affected persons; and

6. Supporting documents, as applicable.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Advisory groups and consultation.

A. The commissioner may form a standing or ad hoc advisory group to make recommendations on a proposed regulation. When an ad hoc advisory group is formed, it shall include representatives from the interested persons or groups identified in § 2.3. The membership of any ad hoc advisory group shall be selected by the commissioner.

B. Ad hoc advisory groups or consultation with groups or individuals will be used when the regulation proposed is unique to Virginia or more stringent than existing federal regulations.

C. Ad hoc advisory groups or consultation with groups or individuals may be used when:

1. The proposed regulation is of wide general impact;

2. The proposed regulation is of wide general interest to the public;

3. The subject of the regulation has not been regulated previously by the department;

4. The department determines this is the most effective method to develop the regulation; or

5. The department determines additional technical expertise and knowledge would be beneficial in developing the regulation.

§ 3.2. Open meetings.

The commissioner may schedule an open meeting or meetings to provide information and to receive views and comments and answer questions from the public. The meeting(s) will normally be held at locations throughout the Commonwealth, but if the proposed regulation will apply only to a particular area of the state, it will be held in the affected area. These meetings may be held prior to the beginning of the formal regulatory process or during the Notice of Intended Regulatory Action period or during the 60-day comment period on proposed regulations and will be in addition to any public hearing.

§ 3.3. Notice of Intended Regulatory Action (NOIRA).

A. The department will identify persons or groups, as referred to in § 2.3, interested in the development of the regulation and assemble the appropriate mailing list.

B. The department shall issue a NOIRA whenever it intends to consider the development, amendment or repeal of any regulation. The NOIRA will include:

1. Subject of the proposed regulation.

2. Identification of the persons or groups affected.

3. Summary of the purpose of the proposed regulation and the issues involved.

4. Listing of applicable laws or regulations, and locations where these documents can be reviewed or obtained.

5. Explanation of federal requirements for adoption and specific obligations of the commissioner, if applicable.

6. Request for comments from interested parties and deadline for receipt of the written comments.

7. Notification of time and place of open meeting(s), if the commissioner intends to hold open meetings.

8. Name, address and telephone number of staff person to be contacted for further information.

9. Statement that the commissioner intends to hold a public hearing on the proposed regulation after it is published.

C. If appropriate, the commissioner will appoint an advisory group as outlined in § 3.1.

D. The NOIRA will be disseminated to the public via:

1. Distribution by mail, facsimile or other appropriate delivery method to persons on the appropriate mailing list.

2. Publication in The Virginia Register of Regulations.

3. Publication in a newspaper of statewide circulation.

4. Publication in newspaper(s) in localities particularly affected by the regulation. The localities particularly affected have been identified by the department.

§ 3.4. Proposed regulations.

A. After consideration of public comment, the department may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft

regulation shall be developed in consultation with such group.

B. The commissioner will present the proposed draft to the secretary's office for review and concurrence prior to the beginning of the 60-day public comment period.

C. The department will submit the proposed regulation to a 60-day public hearing/comment period by forwarding the following documents to the Registrar of Regulations by the established submission date for the desired date of publication in The Virginia Register and the beginning of the 60-day comment period:

1. Notice of public hearing/comment period, which will contain the following:

a. The date, time and place of the public hearing. (Public hearing is defined in this regulation.)

b. The legal authority of the commissioner to act.

c. The name, address and telephone number of an individual to contact for further information and where to submit written comments.

2. Full text of the regulation.

3. Summary of the regulation.

4. Statement of the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.

5. Statement of the purpose of the regulation, defined as the rationale or justification for the provisions of a new regulation or changes to an existing regulation, from the standpoint of the public's health, safety or welfare.

6. Statement of the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation.

7. Statement of the issues of the regulations, defined as the primary advantages and disadvantages for the public, and as applicable for the department or the state, of implementing the new or amended regulatory provisions.

8. Statement of the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance with the new regulation or amendments, and the identity of any localities particularly affected by the regulation. The estimated impact shall represent the commissioner's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation.

9. A copy of the written assurance from the Office of the Attorney General which states that the commissioner has the statutory authority to issue the proposed regulation.

10. An explanation of how clarity and simplicity were assured in drafting the regulations.

11. A statement describing the alternative approaches that were considered to meet the need the proposed regulations address, and assurance that the proposed regulations are the least burdensome available alternative.

12. A schedule setting forth when, after the effective date of the regulation, the commissioner will evaluate it for effectiveness and continued need.

D. Concurrently with the preceding step, the commissioner will submit required documentation to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.

E. Upon receipt of the proposed regulation and appropriate documentation, the Registrar of Regulations will publish the summary of the regulation and the public hearing notice in The Virginia Register and in a Richmond area newspaper of general circulation. If applicable, the department will request that the Registrar publish the notice in newspapers in other areas of the state. The department will mail a copy of the notice to persons and groups on the appropriate mailing list.

F. During the public comment period, the regulation will be available for review concurrently by the following:

1. The public,

2. The Governor,

3. The General Assembly,

4. The Secretary of Commerce and Trade, and

5. The Attorney General

§ 3.5. Completion of the adoption process.

A. The department shall prepare a summary of the oral and written comments received during the 60-day public comment period and the department's response to the comments. A draft of the department's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.

B. At the end of the 60-day public comment period, the department shall prepare the final proposed regulation.

C. The department shall submit the final regulation to the Registrar of Regulations for publication in The Virginia Register at least 30 days prior to the effective date of the regulation.

D. The following documents shall be sent to the Registrar's Office. Concurrently, these documents shall be sent to the Governor's Office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.

1. A copy of the final regulation.

2. A current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation.

3. The summary of the oral and written comments received during the 60-day public comment period and the department's response to the comments.

VA.R. Doc. No. R94-335; Filed December 8, 1993, 11:27 a.m.

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Virginia Apprenticeship Council

Title of Regulation: **VR 425-01-102. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 40.1-117 of the Code of Virginia.

Public Hearing Date: January 27, 1994 - 7 p.m.
Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis: The statutory authority for promulgating this regulation is §§ 40.1-117 through 40.1-126 of the Code of Virginia. Section 40.1-118 specifically defines the authority of the council, while § 40.1-125 charges the Commissioner of Labor and Industry to administer the provisions of this chapter. Section 9-6.14:7.1 of the Administrative Process Act requires the council to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations.

Purpose: The purpose of these Public Participation Guidelines is to ensure that the public and all parties interested in regulations adopted by the council have a full and fair opportunity to participate as regulations are considered and adopted, in compliance with the Virginia Administrative Process Act and Executive Order Number Twenty-three (90) (Revised).

Substance: The regulation defines appropriate terms, and identifies the major groups interested in the regulatory process of the council. It describes the specific manner by which the public will be involved in the formulation of regulations, by offering petitions to develop or amend regulations. The regulation provides for the formation of ad hoc advisory groups, and identifies when they may be used. The regulation describes how open meetings may be used to receive views and comments and answer questions from the public.

The regulation also specifies how and to whom a Notice of Intended Regulatory Action will be issued. It sets out the procedures for submitting the proposed regulations to the appropriate offices of the Executive Branch and the Office of the Attorney General. The regulation details how a 60-day public comment period is established, and how a public hearing is conducted. The regulation provides that a summary of all public comments received will be provided to those who commented. It describes how a regulation will be adopted by the council.

Issues: The provisions of this regulation provide substantial and substantive opportunities for comment by the public on regulations under consideration by the Apprenticeship Council. They also afford an opportunity for the public to offer regulations for possible adoption. A disadvantage is that additional procedures may extend the length of time necessary for a regulation to be adopted. This is outweighed by the advantages of having regulations which have been fully and fairly scrutinized and commented upon by the public. Another advantage is the opportunity for interested parties to participate in the development of regulations that are adopted by the council.

Estimated Impact: Persons affected include approximately 9,000 registered apprentices, approximately 2,500 sponsors of apprenticeship programs, and the citizens of the Commonwealth who depend on a skilled workforce. Expected costs of compliance by the regulated community are nil. Estimated costs for the department to implement the regulation are $3,000 per year for mailing, newspaper advertisements, and conducting open meetings and hearings, assuming the council proposes or amends one regulation per year.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Apprenticeship Council on September 19, 1984.

Emergency Public Participation Guidelines which included the new requirements were adopted by the council June 28, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Apprenticeship Council to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Apprenticeship Council (council) set out procedures to be followed by the council and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the council have a full and fair opportunity to participate at every stage. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, to solicit and use public comments and suggestions, to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

VR 425-01-102. Public Participation Guidelines.

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:

"Ad hoc advisory group" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the council on particular issues under consideration for regulation.

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

"Commissioner" means the Commissioner of Labor and Industry or his designee.

"Council" means the Virginia Apprenticeship Council.

"Department" means the Virginia Department of Labor and Industry.

"Open meeting" means an informal meeting to provide an opportunity for the council or their designee(s) to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the council. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the council with the authority conferred upon it by applicable basic law.

"Secretary" means the Secretary of Commerce and Trade or his designee.

PART II.
GENERAL INFORMATION.

§ 2.1. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are adopted by the Apprenticeship Council and administered by the Commissioner of Labor and Industry. They shall not apply to regulations adopted on an emergency basis. This regulation shall not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

§ 2.2. Purpose.

The purpose of these guidelines is to ensure that the public and all parties interested in the regulations have a full and fair opportunity to participate at every stage.

The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

At the discretion of the council, the procedures in Part III may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

§ 2.3. Identification of interested groups.

The major groups interested in the regulatory process of the council are:

1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;

2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and

3. Persons or groups who have asked to be placed on

a mailing list.

§ 2.4. Public involvement with formulation of regulations.

A. The council shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The council shall consider the petition and provide a response within 180 days.

B. The petition, at a minimum, shall contain the following information:

1. Name, mailing address and telephone number of petitioner;

2. Petitioner's interest in the proposed action;

3. Recommended regulation or addition, deletion or amendment to a specific regulation;

4. Statement of need and justification for the proposed action;

5. Statement of impact on the petitioner and other affected persons; and

6. Supporting documents, as applicable.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Advisory groups and consultation.

A. The council may form a standing or ad hoc advisory group to make recommendations on a proposed regulation.

B. Ad hoc advisory groups or consultation with groups or individuals may be used when:

1. The proposed regulation is of wide general impact;

2. The proposed regulation is of wide general interest to the public;

3. The subject of the regulation has not been regulated previously by the council;

4. The council determines this is the most effective method to develop the regulation; or

5. The council determines additional technical expertise and knowledge would be beneficial in developing the regulation.

§ 3.2. Open meetings.

The council may schedule an open meeting or meetings to provide information and to receive views and comments and answer questions from the public. The meeting(s) will normally be held at locations throughout the Commonwealth, but if the proposed regulation will apply only to a particular area of the state, it will be held in the affected area. These meetings may be held prior to the beginning of the formal regulatory process or during the Notice of Intended Regulatory Action period or during the 60-day comment period on proposed regulations and will be in addition to any public hearing.

§ 3.3. Notice of Intended Regulatory Action (NOIRA).

A. The department will identify parties as referred to in § 2.3 interested in the development of the regulation and assemble the appropriate mailing list.

B. The council shall issue a NOIRA whenever it considers the adoption, amendment or repeal of any regulation. The NOIRA will include:

1. Subject of the proposed regulation.

2. Identification of the persons or groups affected.

3. Summary of the purpose of the proposed regulation and the issues involved.

4. Listing of applicable laws or regulations, and locations where these documents can be reviewed or obtained.

5. Explanation of federal requirements for adoption and specific obligations of the council, if applicable.

6. Request for comments from interested parties and deadline for receipt of the written comments.

7. Notification of time and place of open meeting(s), if the council intends to hold open meetings.

8. Name, address and telephone number of staff person to be contacted for further information.

9. Statement that the council intends to hold a public hearing on the proposed regulation after it is published.

C. The council will appoint advisory or consultation groups in accordance with § 3.1, if appropriate.

D. The NOIRA will be disseminated to the public via:

1. Distribution by mail to persons on appropriate mailing list, including publications of interested groups.

2. Publication in The Virginia Register of Regulations.

3. Publication in newspaper of statewide circulation and in specific affected areas of the state, if applicable.

§ 3.4. Proposed regulations.

A. After consideration of public comment, the council may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group.

B. The commissioner at the direction of the council will present the proposed draft to the secretary's office for review and concurrence prior to the beginning of the 60-day public comment period.

C. The council will submit the proposed regulation to a 60-day public hearing/comment period by forwarding the following documents to the Registrar of Regulations by the established submission date for the desired date of publication in The Virginia Register and the beginning of the 60-day comment period:

1. Notice of public hearing/comment period, which will contain the following:

a. The date, time and place of the hearing.

b. The legal authority of the council to act.

c. The name, address and telephone number of an individual to contact for further information and where to submit written comments.

2. Full text of the regulation.

3. Summary of the regulation.

4. Statement of the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.

5. Statement of the purpose of the regulation, defined as the rationale or justification for the provisions of a new regulation or changes to an existing regulation, from the standpoint of the public's health, safety or welfare.

6. Statement of the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation.

7. Statement of the issues of the regulations, defined as the primary advantages and disadvantages for the public, and as applicable for the department or the state, of implementing the new or amended regulatory provisions.

8. Statement of the estimated impact, defined as the projected number of persons affected, and the projected costs, expressed as a dollar figure or range, for the implementation and compliance with the new regulation or amendments. The estimated impact shall represent the council's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation.

9. A copy of the written assurance from the Office of the Attorney General which states that the council has the statutory authority to issue the proposed regulation.

10. An explanation of how clarity and simplicity were assured in drafting the regulations.

11. A statement describing the alternative approaches that were considered to meet the need the proposed regulations address, and assurance that the proposed regulations are the least burdensome available alternative.

12. A schedule setting forth when, after the effective date of the regulation, the council will evaluate it for effectiveness and continued need.

D. Concurrently with the preceding step, the council will submit required documentation to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.

E. Upon receipt of the proposed regulation and appropriate documentation, the Registrar of Regulations will publish the summary of the regulation and the public hearing notice in The Virginia Register and in the Richmond area newspaper of general circulation. If requested, the Registrar will publish the notice in other selected areas of the state. A copy of the notice shall also be mailed to persons on the appropriate mailing list.

F. During the public comment period, the regulation will be reviewed concurrently by the following:

1. The public,

2. The Governor,

3. The General Assembly,

4. The Secretary of Commerce and Trade, and

5. The Attorney General.

§ 3.5. Completion of the adoption process.

A. The council shall prepare a summary of the oral and written comments received during the 60-day public comment period and the council's response to the comments. A draft of the council's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.

B. At the end of the 60-day public comment period, the

council shall prepare the final proposed regulation.

C. The final regulation shall be submitted to the council for adoption.

D. The council shall submit the final regulation to the Registrar of Regulations for publication in The Virginia Register at least 30 days prior to the effective date of the regulation.

E. The following documents shall be sent to the Registrar's Office. Concurrently, these documents shall be sent to the Governor's Office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.

1. A copy of the final regulation.

2. A current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation.

3. The summary of the oral and written comments received during the 60-day public comment period and the council's response to the comments.

F. The remaining steps in the adoption process shall be carried out in accordance with the provisions of the Administrative Process Act and the Governor's Executive Order for review of proposed regulations.

VA.R. Doc. No. R94-336; Filed December 8, 1993, 11:27 a.m.

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Virginia Safety and Codes Board

Title of Regulation: **VR 425-02-101. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 40.1-22(5) of the Code of Virginia.

Public Hearing Date: February 2, 1994 - 1 p.m.
Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis: The statutory authority for promulgating this regulation is § 40.1-22 of the Code of Virginia. Section 40.1-22(5) defines the authority of the board to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees and to effect compliance with the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). Section 9-6.14:7.1 of the Administrative Process Act requires the board to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations.

Purpose: The purpose of these Public Participation Guidelines is to ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate as regulations are considered and adopted, in compliance with the Virginia Administrative Process Act and Executive Order Number Twenty-three (90) (Revised).

Substance The regulation defines appropriate terms, and identifies the major groups interested in the regulatory process of the board. It describes the specific manner by which the public will be involved in the formulation of regulations, by offering petitions to develop or amend regulations. The regulation provides for the formation of ad hoc advisory groups, and identifies when they may be used. The regulation describes how open meetings may be used to receive views and comments and answer questions from the public.

The regulation also specifies how and to whom a Notice of Intended Regulatory Action will be issued. It sets out the procedures for submitting the proposed regulations to the appropriate offices of the Executive Branch and the Office of the Attorney General. The regulation details how a 60-day public comment period is established, and how a public hearing is conducted. The regulation provides that a summary of all public comments received will be provided to those who commented. It describes how a regulation will be adopted by the board.

It also provides a procedure to notify the public of proposed federal Occupational Safety and Health Administration (OSHA) regulations and to encourage public participation in the federal regulatory process.

Issues: The provisions of this regulation provide substantial and substantive opportunities for comment by the public on regulations under consideration by the Safety and Health Codes Board. They also afford an opportunity for the public to offer regulations for possible adoption. A disadvantage is that additional procedures may extend the length of time necessary for a regulation to be adopted. This is outweighed by the advantages of having regulations which have been fully and fairly scrutinized and commented upon by the public. Another advantage is the opportunity for interested parties to participate in the development of regulations that are adopted by the commissioner.

Estimated Impact: Persons affected include approximately 151,792 private and government employers as well as employers or building owners required to have boiler/pressure vessels in their establishments inspected. Also affected are the 2,606,639 employees of these employers. Expected costs of compliance with this regulation by the regulated community are nil. Estimated costs for the department to implement the regulation are $2,700 for mailing, newspaper advertisements, and conducting open meetings and hearings, for each regulation proposed or amended by the board which is subject to the Administrative Process Act. There are no

localities which will be particularly affected by this regulation.

Summary:

Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Safety and Health Codes Board on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the board June 21, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Safety and Health Codes Board to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Safety and Health Codes Board (board) set out procedures to be followed by the board and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the board which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch. The regulation also provides a procedure to notify the public of proposed federal Occupational Safety and Health Administration regulatory action and encourages the public's participation in the formulation of these regulations at the federal level.

VR 425-02-101. Public Participation Guidelines.

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:

"Ad hoc advisory group" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the board on particular issues under consideration for regulation.

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

"Board" means the Virginia Safety and Health Codes Board.

"Commissioner" means the Commissioner of Labor and Industry or his designee.

"Department" means the Virginia Department of Labor and Industry.

"Locality particularly affected" means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

"Open meeting" means an informal meeting to provide an opportunity for the board or their designee to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the board. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"OSHA" means the Occupational Safety and Health Administration, U.S. Department of Labor.

"Public hearing" means an informational proceeding conducted pursuant to § 9-6.14:7.1 of the Code of Virginia.

"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the board in accordance with the authority conferred upon it by applicable basic law.

"Secretary" means the Secretary of Commerce and Trade or his designee.

PART II.
GENERAL INFORMATION.

§ 2.1. Applicability.

These guidelines shall apply to all regulations subject to the Administrative Process Act which are adopted by the

Virginia Safety and Health Codes Board and administered by the Commissioner of Labor and Industry. They shall not apply to regulations adopted on an emergency basis. This regulation does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

§ 2.2. Purpose.

The purpose of these guidelines is to ensure that the public and all parties interested in the regulations have a full and fair opportunity to participate at every stage in the development or revision of the regulations.

The failure of any person to receive any notice or copies of any documents provided under these guidelines shall not affect the validity of any regulation otherwise adopted in accordance with this regulation.

At the discretion of the board, the procedures in Part III or Part IV may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

§ 2.3. Identification of interested persons and groups.

The major groups interested in the regulatory process of the board are:

1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;

2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and

3. Persons or groups who have asked to be placed on a mailing list.

§ 2.4. Public involvement with formulation of regulations.

A. The board shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The board shall consider the petition and provide a response within 180 days.

B. The petition, at a minimum, shall contain the following information:

1. Name, mailing address and telephone number of petitioner;

2. Petitioner's interest in the proposed action;

3. Recommended regulation or addition, deletion or amendment to a specific regulation;

4. Statement of need and justification for the proposed action;

5. Statement of impact on the petitioner and other affected persons; and

6. Supporting documents, as applicable.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Advisory groups and consultation.

A. The board may form a standing or ad hoc advisory group to make recommendations on a proposed regulation. When an ad hoc advisory group is formed, it shall include representatives from the interested persons or groups identified in § 2.3. The membership of any ad hoc advisory group shall be selected by the board or, at the board's option, by a committee of board members or, at the direction of the board, by the commissioner.

B. Ad hoc advisory groups or consultation with groups or individuals will be used when the regulation proposed is unique to Virginia or more stringent than existing federal regulations.

C. Ad hoc advisory groups or consultation with groups or individuals may be used when:

1. The proposed regulation is of wide general impact;

2. The proposed regulation is of wide general interest to the public;

3. The subject of the regulation has not been regulated previously by the board;

4. The board determines this is the most effective method to develop the regulation; or

5. The board determines additional technical expertise and knowledge would be beneficial in developing the regulation.

§ 3.2. Open meetings.

The board may schedule an open meeting or meetings to provide information and to receive views and comments and answer questions from the public. The meeting(s) will normally be held at locations throughout the Commonwealth, but if the proposed regulation will apply only to a particular area of the state, it will be held in the affected area. These meetings may be held prior to the beginning of the formal regulatory process or during the Notice of Intended Regulatory Action period or during the 60-day comment period on proposed regulations and will be in addition to any public hearing.

§ 3.3. Notice of Intended Regulatory Action (NOIRA).

A. The department, at the direction of the board, will

identify persons or groups, as referred to in § 2.3, interested in the development of the regulation and assemble the appropriate mailing list.

B. The board shall issue a NOIRA whenever it intends to consider the development, amendment or repeal of any regulation. The NOIRA will include:

1. Subject of the proposed regulation.

2. Identification of the persons or groups affected.

3. Summary of the purpose of the proposed regulation and the issues involved.

4. Listing of applicable laws or regulations, and locations where these documents can be reviewed or obtained.

5. Explanation of federal requirements for adoption and specific obligations of the board, if applicable.

6. Request for comments from interested parties and deadline for receipt of the written comments.

7. Notification of time and place of open meeting(s), if the board intends to hold open meetings.

8. Name, address and telephone number of staff person to be contacted for further information.

9. Statement that the board intends to hold a public hearing on the proposed regulation after it is published.

C. If appropriate, the board will appoint an advisory group as outlined in § 3.1.

D. The NOIRA will be disseminated to the public via:

1. Distribution by mail, facsimile or other appropriate delivery method to persons on the appropriate mailing list.

2. Publication in The Virginia Register of Regulations.

3. Publication in a newspaper of statewide circulation.

4. Publication in newspaper(s) in localities particularly affected by the regulation. The localities particularly affected have been identified by the department at the direction of the board.

§ 3.4. Proposed regulations.

A. After consideration of public comment, the board may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group.

B. The commissioner, at the direction of the board, will present the proposed draft to the secretary's office for review and concurrence prior to the formal adoption by the board and the beginning of the 60-day public comment period.

C. The board will submit the proposed regulation to a 60-day public hearing/comment period by forwarding the following documents to the Registrar of Regulations by the established submission date for the desired date of publication in The Virginia Register and the beginning of the 60-day comment period:

1. Notice of public hearing/comment period, which will contain the following:

a. The date, time and place of the public hearing. (Public hearing is defined in this regulation.)

b. The legal authority of the board to act.

c. The name, address and telephone number of an individual to contact for further information and where to submit written comments.

2. Full text of the regulation.

3. Summary of the regulation.

4. Statement of the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed.

5. Statement of the purpose of the regulation, defined as the rationale or justification for the provisions of a new regulation or changes to an existing regulation, from the standpoint of the public's health, safety or welfare.

6. Statement of the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation.

7. Statement of the issues of the regulations, defined as the primary advantages and disadvantages for the public, and as applicable for the department or the state, of implementing the new or amended regulatory provisions.

8. Statement of the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance with the new regulation or amendments, and the identity of any localities particularly affected by the regulation. The estimated impact shall represent the board's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in

no way affect the validity of the regulation.

9. A copy of the written assurance from the Office of the Attorney General which states that the board has the statutory authority to issue the proposed regulation.

10. An explanation of how clarity and simplicity were assured in drafting the regulations.

11. A statement describing the alternative approaches that were considered to meet the need the proposed regulations address, and assurance that the proposed regulations are the least burdensome available alternative.

12. A schedule setting forth when, after the effective date of the regulation, the board will evaluate it for effectiveness and continued need.

D. Concurrently with the preceding step, the board will submit required documentation to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.

E. Upon receipt of the proposed regulation and appropriate documentation, the Registrar of Regulations will publish the summary of the regulation and the public hearing notice in The Virginia Register and in a Richmond area newspaper of general circulation. If applicable, the department will request that the Registrar publish the notice in newspapers in other areas of the state. The department will mail a copy of the notice to persons and groups on the appropriate mailing list.

F. During the public comment period, the regulation will be available for review concurrently by the following:

1. The public,

2. The Governor,

3. The General Assembly,

4. The Secretary of Commerce and Trade, and

5. The Attorney General.

§ 3.5. Completion of the adoption process.

A. The board shall prepare a summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments. A draft of the board's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.

B. At the end of the 60-day public comment period, the department shall prepare the final proposed regulation.

C. The final regulation shall be submitted to the board for adoption.

D. The board shall submit the final regulation to the Registrar of Regulations for publication in The Virginia Register at least 30 days prior to the effective date of the regulation.

E. The following documents shall be sent to the Registrar's office. Concurrently, these documents shall be sent to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.

1. A copy of the final regulation.

2. A current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation.

3. The summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments.

PART IV.
OCCUPATIONAL SAFETY AND HEALTH STANDARDS PROMULGATED BY THE U. S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.

§ 4.1. General.

The Virginia State Plan for the enforcement of occupational safety and health laws commits the state to adopt regulations that shall be at least as stringent as the standards promulgated by the U. S. Department of Labor, Occupational Safety and Health Administration.

Accordingly, participation in the formulation of such regulations must occur during the adoption of the regulations at the federal level. To encourage such participation the following actions will be taken.

§ 4.2. Notice of proposed federal regulatory action.

A. When advised of proposed federal regulatory action, the board will prepare a general notice of the proposed federal regulatory action for publication in The Virginia Register. The general notice will include:

1. Subject of the proposed regulation.

2. Summary of the issue involved and purpose of the proposed regulation.

3. Timetable for submitting written comments or notification of desire to be heard at hearing or both.

4. Time and place of public hearing.

5. Request that comments be submitted to OSHA with

a copy to the Virginia Department of Labor and Industry.

6. Name and address of contact at OSHA.

7. Copy of proposed regulation.

B. The notice will be disseminated to the appropriate persons or groups identified and placed on a mailing list assembled in accordance with § 2.3 of these guidelines.

VA.R. Doc. No. R94-337; Filed December 8, 1993, 11:27 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulations: **State Plan for Medical Assistance Relating to PASARR; Education Component of Nursing Facility Care; Nursing Facility Residents' Appeal Rights.**
VR 460-01-46:1. Utilization/Quality Control (§ 4.14(a)).
VR 460-01-76. Appeals Process (§ 4.28 (a) and (b)).
VR 460-01-79.19. Preadmission Screening and Annual Resident Review in Nursing Facilities (§ 4.39 (a) through (g)).
VR 460-02-4.3900. Definition of Specialized Services.
VR 460-02-4.3910. Categorical Determinations.
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care (Attachment 3.1-C).
VR 460-02-4.1410. Criteria for Preadmission Screening and Nursing Home Placement of Mentally Ill and Mentally Retarded Individuals (REPEALING).
VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement 1 to Attachment 3.1-C).
VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.

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

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Section 9-6.14:9 of the Administrative Process Act (APA) provides 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, the agency is initiating the public notice and comment process as contained in Article 2 of the Administrative Process Act.

The PASARR action is mandated by 42 Code of Federal Regulations § 483.100-138. These regulations were initially established statutorily through the Omnibus Budget Reconciliation Act (OBRA) '87. The appeal rights of nursing facility residents is mandated in 42 CFR 431.153 and 154. However, this action is not exempt from Article 2 of the APA because the state has exercised discretion in the development of PASARR process requirements.

Purpose: The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

Summary and Analysis: The sections of the State Plan affected by this action are preprinted pages (pp. 46, 76, 79s, and 79t) and Attachments 4.39 and 4.39-A. The state regulations affected by this action are Preadmission Screening and Annual Resident Review (VR 460-04-4.3910).

Preadmission screening and annual resident review.

The Omnibus Budget Reconciliation Act (OBRA) of 1987, Part 2, Subtitle C of Title IV, added § 1919 to the Social Security Act. Specifically, § 1919 (b)(3)(F) prohibits a nursing facility from admitting or retaining an individual who has a condition of mental illness or mental retardation unless that individual has been determined by the State Mental Health or Mental Retardation Authority (MH/MRA) to require the level of services provided by a nursing facility. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) is the designated MH/MRA in the Commonwealth.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations be completed on all applicants to a nursing facility. If the Level I assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level II evaluation prior to admission to the nursing facility. Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

On November 30, 1992, the Health Care Financing Administration (HCFA) published final regulations concerning PASARR. The final regulations published by HCFA are similar to the original requirements but with several significant changes. First, the definition of mental illness has been revised. Because the new definition stresses severity of the mental illness, the change should result in a decrease in the number of individuals referred for a Level II evaluation for mental illness.

Second, HCFA is allowing states to determine personnel qualifications for specific parts of the Level II evaluation process. For example, a board-certified or board-eligible psychiatrist is no longer mandated to complete the psychiatric examination. States may individually specify the qualifications of certain assessors. Third, states are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

DMAS has followed HCFA's requirements and only included discretionary items where such were permitted (e.g., in determining categorical determinations and descriptions of specialized services). In addition, language was added to address DMAS monitoring activities as the state Medicaid agency is ultimately responsible to ensure that PASARR activities are appropriately performed.

In order to develop program requirements that are the most efficient and least burdensome to providers, recipients, and contractors, DMAS consulted staff of DMHMRSAS in the regulatory development process. DMAS, in collaboration with DMHMRSAS, routinely monitors the PASARR process to ensure that appropriate reviews are conducted. At least annually, DMAS will confer with DMHMRSAS to determine the efficiency of the program. Because this regulation is driven by a federal mandate, it will remain in effect until such time that federal requirements are changed.

Education component of nursing facility specialized care services.

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation required that "the nursing facility...provide for (emphasis added) the educational and habilitative needs of the child." At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of this intent has recently come under question, so this language is being clarified.

NF residents' appeal rights.

Residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

Issues:

Preadmission screening and annual resident review.

Federal regulations require screening of all applicants, regardless of payment source, prior to admission to a nursing facility for conditions of mental illness and mental retardation to determine whether nursing facility services are needed. Also required are annual resident reviews of all nursing facility residents who have a condition of mental illness or mental retardation. Federal financial payment will be withheld for individuals who are not screened as required.

Education component of nursing facility specialized care services.

DMAS requires that nursing facility specialized care providers coordinate with state and local educational authorities for the educational and habilitative needs of a child receiving specialized care services. While the specialized care provider is not required to furnish these services directly, the provider must ensure that they are obtained.

NF residents' appeal rights.

Federal regulations regulate the procedures and reasons for which nursing facilities may discharge or transfer residents. Nursing facility residents who disagree with the facility decision or feel their rights have been violated may appeal to the DMAS. The DMAS must grant a fair hearing to these appellants. The department proposes to use the same appeal process for these individuals as used for all other recipients. Regulations for those are found at VR 460-04-8.7.

Impact:

Preadmission screening and annual resident review.

The final regulation makes permanent the emergency regulations issued on March 26, 1993. DMAS has not changed the estimates in the emergency regulations related to the resident review for nursing facility placement and review of the Level II screening by community service boards. These figures are $1,382,000 and $183,551 respectively. New costs are not anticipated at this time as these regulations have been in effect since their issuance as emergency regulations.

Education component of nursing facility specialized care services.

There are no costs associated with the clarifying language for the education component of nursing facility specialized care services.

NF residents' appeal rights.

These regulations assign to the state Medicaid agency the responsibility to provide a system of fair hearings to both Medicaid eligible and private-pay residents of nursing facilities who are transferred or discharged against their will. While the DMAS has provided fair hearings for other Medicaid issues, the agency will now receive appeals on these new issues from private-pay individuals as well as Medicaid eligible individuals.

During 1992, the Department of Health carried the fair hearing responsibility for nursing facility transfer and discharge. Only one appeal was filed during that year. During 1993 DMAS has received two appeals.

Summary:

The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

The sections of the State Plan affected by this action are preprinted pages (pp. 46, 76, 79s, and 79t) and Attachments 4.39 and 4.39-A. The state regulations affected by this action are Preadmission Screening and Annual Resident Review (VR 460-04-4.3910).

Preadmission screening and annual resident review.

The Omnibus Budget Reconciliation Act (OBRA) of 1987, Part 2, Subtitle C of Title IV, added § 1919 to the Social Security Act. Specifically, § 1919 (b)(3)(F) prohibits a nursing facility from admitting or retaining an individual who has a condition of mental illness or mental retardation unless that individual has been determined by the State Mental Health or Mental Retardation Authority (MH/MRA) to require the level of services provided by a nursing facility. The Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) is the designated MH/MRA in the Commonwealth.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations be completed on all applicants to a nursing facility. If the Level I assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level II evaluation prior to admission to the nursing facility. Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

On November 30, 1992, the Health Care Financing Administration (HCFA) published final regulations concerning PASARR. The final regulations published by HCFA are similar to the original requirements but with several significant changes. First, the definition of mental illness has been revised. Because the new definition stresses severity of the mental illness, the change should result in a decrease in the number of individuals referred for a Level II evaluation for mental illness.

Second, HCFA is allowing states to determine personnel qualifications for specific parts of the Level II evaluation process. For example, a board-certified or board-eligible psychiatrist is no longer mandated to complete the psychiatric examination. States may individually specify the qualifications of certain assessors. Third, states are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

DMAS has followed HCFA's requirements and only included discretionary items where such were permitted (e.g., in determining categorical determinations and descriptions of specialized services). In addition, language was added to address DMAS monitoring activities as the state Medicaid agency is ultimately responsible to ensure that PASARR activities are appropriately performed.

In order to develop program requirements that are the most efficient and least burdensome to providers, recipients, and contractors, DMAS consulted staff of DMHMRSAS in the regulatory development process. DMAS, in collaboration with DMHMRSAS, routinely monitors the PASARR process to ensure that appropriate reviews are conducted. At least annually, DMAS will confer with DMHMRSAS to determine the efficiency of the program. Because this regulation is driven by a federal mandate, it will remain in effect until such time that federal requirements are changed.

Education component of nursing facility specialized care services.

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation required that "the nursing facility...provide for (emphasis added) the educational and habilitative needs of the child." At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of this intent has recently come under question, so this language is being clarified.

NF residents' appeal rights.

Residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

VR 460-01-46:1. Utilization/Quality Control.

Citation: 42 CFR 431.60, 42 CFR 456.2, 50 FR 15312, 1902(a)(30)(C) and 1902(d) of the Act, P.L. 99-509 (§ 9431)

§ 4.14. Utilization/Quality Control.

(a) A statewide program of surveillance and utilization control has been implemented that safeguards against unnecessary or inappropriate use of Medicaid services available under this plan and against excess payments, and that assesses the quality of services. The requirements of

42 CFR Part 456 are met:

☒ Directly. ~~Attachment 4.14 A contains the criteria for pre-admission screening and nursing home placement of MI/MR persons.~~

☐ By undertaking medical and utilization review requirements through a contract with a Utilization and Quality Control Peer Review Organization (PRO) designated under 42 CFR Part 462. The contract with the PRO:

(1) Meets the requirements of § 434.6(a);

(2) Includes a monitoring and evaluation plan to ensure satisfactory performance;

(3) Identifies the services and providers subject to PRO review;

(4) Ensures that PRO review activities are not inconsistent with the PRO review of Medicare services; and

(5) Includes a description of the extent to which PRO determinations are considered conclusive for payment purposes.

☐ Quality review requirements described in § 1902(a)(30)(C) of the Act relating to services furnished by HMO's under contract are undertaken through contract with the PRO designated under 42 CFR Part 462.

Citation: 1902(a)(30)(C) and 1902 (d) of the Act, P.L. 99-509, (§ 9431)

☐ By undertaking quality review of services furnished by HMOs under each contract with an HMO through a private accreditation body.

VR 460-01-76. Appeals Process.

Citation: 42 CFR 431.152; AT-79-18; 52 FR 22444; §§ 1902(a)(28)(D)(i) and 1919(e)(7) of the Act; P.L. 100-203 (§ 4211(c)).

§ 4.28. Appeals Process.

(a) The Medicaid agency has established appeals procedures for NFs as specified in 42 CFR 431.153 and 431.154.

(b) The State provides an appeals system that meets the requirements of 42 CFR 431 Subpart E, 42 CFR 483.12, and 42 CFR 483 Subpart E for residents who wish to appeal a notice of intent to transfer or discharge from a NF and for individuals adversely affected by the preadmission and annual resident review requirements of 42 CFR 483 Subpart C.

VR 460-01-79.19. Preadmission Screening and Annual Resident Review in Nursing Facilities.

Citation: §§ 1902(a)(28)(D)(i) and 1919(e)(7) of the Act; P.L. 100-203 (§ 4211(c)); P.L. 101-508 (§ 4801(b)).

§ 4.39. Preadmission Screening and Annual Resident Review in Nursing Facilities.

(a) The Medicaid agency has in effect a written agreement with the State mental health and mental retardation the Act; authorities that meet the requirements of 42 (CFR) 431.621(c).

(b) The State operates a preadmission screening and annual resident review program that meets the requirements of 42 CFR 483.100-138.

(c) The State does not claim as "medical assistance under the State Plan" the cost of services to individuals who should receive preadmission screening or annual resident review until such individuals are screened or reviewed.

(d) With the exception of NF services furnished to certain NF residents defined in 42 CFR 483.118(c)(1), the State does not claim as "medical assistance under the State plan" the cost of NF services to individuals who are found not to require NF services.

☒ (e) ATTACHMENT 4.39 specifies the State's definition of specialized services.

☒ (f) Except for residents identified in 42 CFR 483.118(c)(1), the State mental health authority makes categorical determinations that individuals with certain mental conditions or levels of severity of mental illness would normally require specialized services of such an intensity that a specialized services program could not be delivered by the State in most, if not all, NFs and that a more appropriate placement should be utilized.

(g) The State describes an categorical determinations it applies in ATTACHMENT 4.39-A.

VR 460-02-4.3900. Definition of Specialized Services.

The Department of Medical Assistance Services (DMAS) shall define specialized services for the purposes of preadmission screening and annual resident review as follows. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall ensure the provision of services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

1. Partial hospitalization;

2. Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or mental retardation;

3. Day health and rehabilitation;

4. Psychosocial rehabilitation;

5. Crisis intervention;

6. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services;

7. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist;

8. One-to-one supervision necessary for behavior management;

9. Vision and hearing needs related to mental illness or mental retardation for persons over age 21;

10. Dental needs resulting from mental illness or mental retardation sequela for persons over age 21;

11. Habilitation;

12. Supported employment for persons with mental illness or mental retardation;

13. Case management services;

14. Individual psychotherapy;

15. Day treatment;

16. Individual and group counseling; and

17. Inpatient psychiatric care.

VR 460-02-4.3910. Categorical Determinations.

A. A Level II evaluation shall be required for any applicant to a Medicaid-certified nursing facility who is determined, as a result of the Level I identification screening, to have a condition of mental illness or mental retardation as defined in 42 CFR 483.102.

B. If, however, the individual also meets one of the following categorical determinations, a Level II evaluation is not required to be completed for that individual. These determinations may only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits into the established category.

C. The categorical determinations are:

1. A terminal illness in which a physician has documented that life expectancy is less than six months; and

2. A severe physical illness such as coma, functioning at brain stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation must be available which fully describes the severity of the condition.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality 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. General acute care 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, five days 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. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements.

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall conduct at least annually a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or

causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 1 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 (Adult Specialized Care Criteria) or Part 3 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

8. Specialized care services.

a. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

(1) Physician visits at least once weekly;

(2) Skilled nursing services by a registered nurse available 24 hours a day;

(3) Coordinated multidisciplinary team approach to meet the needs of the resident;

(4) ~~For residents under age 21, provision for the educational and habilitative needs of the child~~ *Infection control* ;

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of six sessions each day, 15 minutes per session, five days per week;

(6) For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of four sessions per day, 30 minutes per session, five days a week;

(7) Ancillary services related to a plan of care;

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) Psychology services by a board-certified psychologist related to a plan of care;

(10) Necessary durable medical equipment and supplies as required by the plan of care;

(11) Nutritional elements as required;

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) Nonemergency transportation;

(14) Discharge planning; *and*

(15) Family or caregiver training ~~; and~~ .

~~(16) Infection control.~~

c. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

D. *Intermediate Care* Facilities for the Mentally Retarded ~~(ICMR)~~ *(ICF/MR)* and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an ~~FMR~~ *(ICF/MR)* or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each ~~intermediate care FMR~~ *(ICF/MR)* or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

E. Psychiatric services 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, 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 screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) 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:

"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.

"CFR" means the Code of Federal Regulations.

"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.

"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 hospital 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. 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 hospital, for psychiatric services resulting from an EPSDT screening, 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 admission to a psychiatric hospital 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 psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. 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 licensed 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 62 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 62 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-Language 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-Language 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. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

G. 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).

H. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

* * *

PART I.
INTENSIVE PHYSICAL 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 improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement, participants 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 intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

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 reimbursement will be provided.

PART IV.
INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive 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.

§ 5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

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.

Physical therapy services 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 designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

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 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.

Occupational therapy services 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 designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

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 services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. Speech-language therapy.

Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

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 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.

Cognitive rehabilitation services 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 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;

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 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;

3. 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;

4. 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;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. 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.

Psychology services 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 ordered by a physician;

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 qualified psychologist as required by state law;

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 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.

Social work services 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 ordered by a physician;

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 qualified social worker as required by state law;

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 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.

Recreational therapy 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 ordered by a physician;

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 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;

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 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. Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services 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 appliance 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, for example, an electric wheelchair plus a manual chair; cleansing wipes);

e. 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 non-legend drugs);

f. Home or vehicle modifications;

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

h. Equipment that the primary function is vocationally or educationally related (i.e., but not limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).

PART IX.
HOSPICE SERVICES.

§ 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare or Medicaid, the 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.

PART X.
COMMUNITY MENTAL HEALTH SERVICES.

§ 10.1. Utilization review general requirements.

A. 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; and

4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§ 10.2. 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.

A. Intensive in-home services for children and adolescents.

1. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

2. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. 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.

4. 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.

5. 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.

6. 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.

7. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service 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 five-hour a week minimum 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 or nonhome based services.

9. 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.

10. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. 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:

a. Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. 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:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. 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.

e. 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.

2. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the

Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school 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 reimbursable 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.

5. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. 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 which shall be fully completed within 30 days of initiation of the service.

C. 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, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall 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 reimbursable 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.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state 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 services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term 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.

1. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

3. The program shall 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 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 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.

4. 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.

E. 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.

1. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact are 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 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/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

F. Case management.

1. 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, significant others, service providers, 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.

2. 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.

3. There shall be no maximum service limits for case management services.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

§ 10.3. 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.

A. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

1. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.

2. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

a. Managing personal care needs,

b. Understanding verbal commands and communicating needs and wants,

c. Earning wages without intensive, frequent and ongoing supervision or support,

d. Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

e. 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,

f. Making decisions which require informed consent,

g. Caring for other needs without the assistance or personnel trained to teach functional skills,

h. Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

3. Services for the individual shall be preauthorized annually by DMHMRSAS.

4. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

5. The provider shall update the plan of care at least annually.

6. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

7. The program shall 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 reimbursable 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.

8. The provider shall be licensed by DMHMRSAS.

B. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

1. 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 shall be obtained from DMHMRSAS Care Coordination Unit annually.

2. 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.

3. 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.

a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

b. The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

PART XI.
GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.

§ 11.1. Scope.

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

§ 11.2. Covered outpatient rehabilitative services.

Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service.

§ 11.3. Eligibility criteria for outpatient rehabilitative services.

To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 11.4. Criteria for the provision of outpatient rehabilitative services.

All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

A. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and

sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, 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 or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440 110(c);

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 or under the direction of a speech-language pathologist who meets the qualifications in subdivision B1 above. The program must meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 11.5. Authorization for services.

A. General physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the

patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided.

VR 460-02-4.1410. Criteria for Preadmission Screening and Nursing Home Placement of Mentally Ill and Mentally Retarded Individuals (REPEALING).

VR 460-03-3.1301. Nursing Facility and MR Criteria.

§ 1. Nursing facility criteria introduction.

A. Traditionally, the model for nursing facility care has been facility or institutionally based; however, it is important to recognize that nursing facility care services can be delivered outside a nursing home. Nursing facility care is the provision of services regardless of the specific setting. It is the care rather than the setting in which it is rendered that is significant. The criteria for assessing nursing facility care are divided into two areas: (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living) and (ii) nursing needs.

B. The preadmission screening process marks the beginning of a continuum of long-term care services available to an individual under the Virginia Medical Assistance Program. Nursing facility care services are covered by the program for individuals whose needs meet the criteria established by program regulations.

C. Nursing facilities must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. The Department of Medical Assistance Services shall conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided.

D. The criteria for nursing facility care under the Virginia Medical Assistance Program are contained herein. An individual's need for care must meet this criteria before any authorization for payment by Medicaid will be made for either institutional or noninstitutional long-term care services. Reimbursement to nursing facilities for residents requiring specialized care shall only be made on a contractual basis.

§ 2. Criteria for nursing facility care.

A. Nursing facility care shall be the provision of

services for persons whose health needs require medical and nursing supervision or care. These services may be provided in various settings, institutional and noninstitutional. Both the functional capacity of the individual and his nursing needs must be considered in determining the appropriateness of care.

B. Individuals may be considered appropriate for nursing facility care when one of the following describes their functional capacity:

1. Rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Medication Administration (Item 10).

2. Rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Joint Motion (Item 11).

3. Rated dependent in five to seven of the Activities of Daily Living (Items 1-7), and also rated dependent in Mobility (Item 9).

4. Rated semi-dependent in two to seven of the Activities of Daily Living (Items 1-7) and also rated dependent in Mobility (Item 9), and Behavior Pattern and Orientation (Item 8). An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse.

C. Placement in a noninstitutional setting should be considered before nursing home placement is sought.

§ 3. Functional status.

The following abbreviations shall mean:

I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

A. Bathing

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Is bathed (D)

B. Dressing

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Is dressed (D)

6. Is not dressed (D)

C. Toileting

1. Without help day and night (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Does not use toilet room (D)

D. Transferring

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Is transferred (D)

6. Is not transferred (D)

E. Bowel Function

1. Continent (I)

2. Incontinent less than weekly (d)

3. Ostomy - self care (d)

4. Incontinent weekly or more (D)

5. Ostomy - not self care (D)

F. Bladder Function

1. Continent (I)

2. Incontinent less than weekly (d)

3. External device - self care (d)

4. Indwelling catheter - self care (d)

5. Ostomy - self care (d)

7. External device - not self care (D)

8. Indwelling catheter - not self care (D)

9. Ostomy - not self care (D)

G. Eating/Feeding

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Spoon fed (D)

6. Syringe or tube fed (D)

7. Fed by IV or clysis (D)

H. Behavior Pattern and Orientation

1. Appropriate or Wandering/ Passive less than weekly + Oriented (I)

2. Appropriate or Wandering/ Passive less than weekly + Disoriented - Some Spheres (I)

3. Wandering/Passive Weekly or More + Oriented (I)

4. Appropriate or Wandering/ Passive less than weekly + Disoriented - All Spheres (d)

5. Wandering/Passive Weekly or more + Disoriented - Some or All Spheres (d)

6. Abusive/Aggressive/ Disruptive less than weekly + Oriented or Disoriented (d)

7. Abusive/Aggressive/ Disruptive weekly or more + Oriented (d)

8. Abusive/Aggressive/ Disruptive weekly or more + Disoriented (D)

9. Mobility

a. Goes outside without help (I)

b. Goes outside MH only (d)

c. Goes outside HH only (D)

d. Goes outside MH and HH (D)

e. Confined - moves about (D)

f. Confined - does not move about (D)

10. Medication Administration

a. No medications (I)

b. Self administered - monitored less than weekly (I)

c. By lay persons, monitored less than weekly (I)

d. By Licensed/Professional nurse and/or monitored weekly or more (D)

e. Some or all by Professional nurse (D)

11. Joint Motion

a. Within normal limits (I)

b. Limited motion (d)

c. Instability - corrected (I)

d. Instability - uncorrected (D)

e. Immobility (D)

§ 4. Nursing needs.

A. Following are examples of services provided or supervised by licensed nursing and professional personnel; however, no single service necessarily indicates a need for nursing facility care:

1. Application of aseptic dressings;

2. Routine catheter care;

3. Inhalation therapy after the regimen has been established;

4. Supervision for adequate nutrition and hydration for patients who, due to physical or mental impairments, are subject to malnourishment or dehydration;

5. Routine care in connection with plaster casts, braces, or similar devices;

6. Physical, occupational, speech, or other therapy;

7. Therapies, exercise and positioning to maintain or strengthen muscle tone, to prevent contractures, decubiti, and deterioration;

8. Routine care of colostomy or ileostomy;

9. Use of restraints including bedrails, soft binders, and wheelchair supports;

10. Routine skin care to prevent decubiti;

11. Care of small uncomplicated decubiti, and local skin rashes; or

12. Observation of those with sensory, metabolic, and circulatory impairment for potential medical complications.

B. Services requiring more intensive nursing care, such as wounds or lesions requiring daily care, nutritional deficiencies leading to specialized feeding, and paralysis or paresis benefitting from rehabilitation, shall be reimbursed at a higher rate.

C. The final determination for nursing facility care shall be based on the individual's need for medical and nursing management. Nursing facility care criteria are intended only as guidelines. Professional judgment must always be used to assure appropriateness of care.

§ 5. Specific services which do not meet the criteria for nursing facility care.

A. Care needs that do not meet the criteria for nursing facility care include, but are not limited to, the following:

1. Minimal assistance with activities of daily living;

2. Independent use of mechanical devices such as a wheelchair, walker, crutch, or cane;

3. Limited diets such as mechanically altered, low salt, low residue, diabetic, reducing, and other restrictive diets;

4. Medications that can be independently self-administered or administered by the individual with minimal supervision;

5. The protection of the patient to prevent him form obtaining alcohol or drugs, or from confronting an unpleasant situation; or

6. Minimal observation or assistance by staff for confusion, memory impairment, or poor judgment.

B. Special attention shall be given to individuals who receive psychiatric treatment. These individuals must also have care needs that meet the criteria for nursing facility care.

§ 6. Summary.

In patient placement, all available resources must be explored, i.e., the immediate family, other relatives, home health services, and other community resources. When applying the criteria, primary consideration is to be given to the utilization of available community/family resources.

§ 7. Adult specialized care criteria.

A. General description.

The resident must have long-term health conditions requiring close medical supervision, 24 hours licensed nursing care, and specialized services or equipment.

B. Targeted population.

1. Individuals requiring mechanical ventilation;

2. Individuals with communicable diseases requiring universal or respiratory precautions;

3. Individuals requiring ongoing intravenous medication or nutrition administration; or

4. Individuals requiring comprehensive rehabilitative therapy services.

C. Criteria.

1. The individual must require at a minimum:

a. Physician visits at least once weekly;

b. Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the resident resides, 24 hours a day, whose sole responsibility is the designated unit); and

c. Coordinated multidisciplinary team approach to meet needs.

2. In addition, the individual must meet one of the following requirements:

a. Must require two out of three of the following rehabilitative services: Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of four therapy sessions (minimum of 30 minutes per session) per day, five days per week; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. 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; or

c. Individuals that require at least one of the following special services:

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

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

(3) Dialysis treatment that is provided on-unit (i.e.

peritoneal dialysis);

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

(5) 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);

(6) 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.).

§ 8. Pediatric/adolescent specialized care criteria.

A. General description.

The child must have ongoing health conditions requiring close medical supervision, 24 hours licensed nursing supervision, and specialized services or equipment. The recipient must be age 21 or under.

B. Targeted population.

1. Children requiring mechanical ventilation;

2. Children with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.);

3. Children requiring ongoing intravenous medication or nutrition administration;

4. Children requiring daily dependence on devise based respiratory or nutritional support (tracheostomy, gastrostomy, etc.);

5. Children requiring comprehensive rehabilitative therapy services;

6. Children with terminal illness.

B. Criteria.

1. The child must require at a minimum:

a. Physician visits at least once weekly;

b. Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the child is residing, 24 hours a day, whose sole responsibility is that nursing unit);

c. Coordinated multidisciplinary team approach to meet needs;

d. The nursing facility must ~~provide~~ *coordinate with appropriate state and local agencies* for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. The services must be provided for a total of two hours per day, minimum.

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

a. Must require two out of three of the following physical rehabilitative services: Physical therapy, Occupational therapy, Speech-pathology services; therapy must be provided at a minimum of six therapy sessions (minimum of 15 minutes per session) per day, five days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. 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

c. Children that require at least one of the following special services:

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

(2) Special infection control precautions (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.);

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

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

(5) 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);

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

(7) Care for terminal illness.

§ 9. Criteria for care in facilities for mentally retarded persons.

A. Definitions.

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

"No assistance" means no help is needed.

"Prompting/structuring" means prior to the functioning, some verbal direction or some rearrangement of the environment is needed.

"Supervision" means that a helper must be present during the function and provide only verbal direction, gestural prompts, or guidance.

"Some direct assistance" means that a helper must be present and provide some physical guidance/support (with or without verbal direction).

"Total care" means that a helper must perform all or nearly all of the functions.

"Rarely" means that a behavior occurs quarterly or less.

"Sometimes" means that a behavior occurs once a month or less.

"Often" means that a behavior occurs two to three times a month.

"Regularly" means that a behavior occurs weekly or more.

B. Utilization control regulations require that criteria be formulated for guidance for appropriate levels of services. Traditionally, care for the mentally retarded has been institutionally based; however, this level of care need not be confined to a specific setting. The habilitative and health needs of the client are the determining issues.

C. The purpose of these regulations is to establish standard criteria to measure eligibility for Medicaid payment. Medicaid can pay for care only when the client is receiving appropriate services and when "active treatment" is being provided. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or waivered rehabilitative services for the mentally retarded.

D. Care in facilities for the mentally retarded requires planned programs for habilitative needs or health related services which exceed the level of room, board, and supervision of daily activities.

Such care shall be a combination of habilitative, rehabilitative, and health services directed toward increasing the functional capacity of the retarded person. Examples of services shall include training in the activities of daily living, task-learning skills, socially acceptable behaviors, basic community living programming, or health care and health maintenance. The overall objective of programming shall be the attainment of the optimal physical, intellectual, social, or task learning level which the person can presently or potentially achieve.

E. The evaluation and re-evaluation for care in a facility for the mentally retarded shall be based on the needs of the person, the reasonable expectations of the resident's capabilities, the appropriateness of programming, and whether progress is demonstrated from the training and, in an institution, whether the services could reasonably be provided in a less restrictive environment.

§ 10. Patient assessment criteria.

A. The patient assessment criteria are divided into broad categories of needs, or services provided. These must be evaluated in detail to determine the abilities/skills which will be the basis for the development of a plan of care. The evaluation process will demonstrate a need for programming an array of skills and abilities or health care services. These have been organized into seven major categories. Level of functioning in each category is graded from the most dependent to the least dependent. In some categories, the dependency status is rated by the degree of assistance required. In other categories, the dependency is established by the frequency of a behavior or ability to perform a given task.

B. The resident must meet the indicated dependency level in two or more of categories 1 through 7.

1. Health Status - To meet this category:

a. Two or more questions must be answered with a 4, or

b. Question "j" must be answered "yes."

2. Communication Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

3. Task Learning Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

4. Personal Care - To meet this category:

a. Question "a" must be answered with a 4 or a 5, or

b. Question "b" must be answered with a 4 or a 5,

or

c. Questions "c" and "d" must be answered with a 4 or a 5.

5. Mobility - To meet this category:

Any one question must be answered with a 4 or a 5.

6. Behavior - To meet this category:

Any one question must be answered with a 3 or a 4.

7. Community Living - To meet this category:

a. Any two of the questions "b," "e," or "g" must be answered with a 4 or a 5, or

b. Three or more questions must be answered with a 4 or a 5.

LEVEL OF FUNCTIONING SURVEY

1. Health status.

How often is nursing care or nursing supervision by a licensed nurse required for the following? (Key: 1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)

a. Medication administration and/or evaluation for effectiveness of a medication regimen? 1...2...3...4

b. Direct services: i.e. care for lesions, dressings, treatments (other than shampoos, foot powder, etc.) 1...2...3...4

c. Seizures control 1...2...3...4

d. Teaching diagnosed disease control and care, including diabetes 1...2...3...4

e. Management of care of diagnosed circulatory or respiratory problems 1...2...3...4

f. Motor disabilities which interfere with all activities of Daily Living - Bathing, Dressing, Mobility, Toileting, etc. 1...2...3...4

g. Observation for choking/aspiration while eating, drinking? 1...2...3...4

h. Supervision of use of adaptive equipment, i.e., special spoon, braces, etc. 1...2...3...4

i. Observation for nutritional problems (i.e., undernourishment, swallowing difficulties, obesity) 1...2...3...4

j. Is age 55 or older, has a diagnosis of a chronic disease and has been in an institution 20 years or more 1...2...3...4

2. Communication.

Using the key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person

a. Indicate wants by pointing, vocal noises, or signs? 1...2...3...4

b. Use simple words, phrases, short sentences? 1...2...3...4

c. Ask for at least ten things using appropriate names? 1...2...3...4

d. Understand simple words, phrases or instructions containing prepositions: i.e., "on" "in" "behind"? 1...2...3...4

e. Speak in an easily understood manner? 1...2...3...4

f. Identify self, place of residence, and significant others? 1...2...3...4

3. Task learning skills.

How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)

a. Pay attention to purposeful activities for 5 minutes? 1...2...3...4

b. Stay with a 3 step task for more than 15 minutes? 1...2...3...4

c. Tell time to the hour and understand time intervals? 1...2...3...4

d. Count more than 10 objects? 1...2...3...4

e. Do simple addition, subtraction? 1...2...3...4

f. Write or print ten words? 1...2...3...4

g. Discriminate shapes, sizes, or colors? 1...2...3...4

h. Name people or objects when describing pictures? 1...2...3...4

i. Discriminate between "one," "many," "lot"? 1...2...3...4

4. Personal/self care.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.? 1...2...3...4...5

b. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.? 1...2...3...4...5

c. Perform bathing function (i.e., bathe, runs bath, dry self, etc.)? 1...2...3...4...5

5. Mobility.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. Move (walking, wheeling) around environment? 1...2...3...4...5

b. Rise from lying down to sitting positions, sits without support? 1...2...3...4...5

c. Turn and position in bed, roll over? 1...2...3...4...5

6. Behavior.

How often does this person (Key: 1=Rarely, 2=Sometimes, 3=Often, 4=Regularly)

a. Engage in self destructive behavior? 1...2...3...4

b. Threaten or do physical violence to others? 1...2...3...4

c. Throw things, damage property, have temper outbursts? 1...2...3...4

d. Respond to others in a socially unacceptable manner - (without undue anger, frustration or hostility) 1...2...3...4

7. Community living skills.

With what type of assistance would this person currently be able to (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. Prepare simple foods requiring no mixing or cooking? 1...2...3...4...5

b. Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)? 1...2...3...4...5

c. Add coins of various denominations up to one dollar? 1...2...3...4...5

d. Use the telephone to call home, doctor, fire, police? 1...2...3...4...5

e. Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.? 1...2...3...4...5

f. Refrain from exhibiting unacceptable sexual behavior in public? 1...2...3...4...5

g. Go around cottage, ward, building, without running away, wandering off, or becoming lost? 1...2...3...4...5

h. Make minor purchases i.e., candy, soft drink, etc.? 1...2...3...4...5

VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.

§ 1. Definitions.

"Community Services Board (CSB)" means the local governmental agency responsible for local mental health, mental retardation, and substance abuse services. Boards function as service providers, client advocates, and community educators.

"Dementia" means, for the purposes described herein, having a primary diagnosis of dementia, as described in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987, or a nonprimary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined herein.

"Diagnostic and Statistical Manual of Mental Disorders, 3rd edition" means the 1987 publication of the American Psychiatric Association classifying diagnoses of abnormal behavior.

"Interfacility transfer" means when an individual is transferred from one nursing facility to another nursing facility, with or without an intervening hospital stay. Interfacility transfers are subject to annual resident review rather than preadmission screening. In cases of transfer of a resident with MI or MR from a NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent PASARR and resident assessment reports shall accompany the transferring resident.

"Level I identification" means the process performed to identify nursing facility applicants with a condition of mental illness or mental retardation.

"Level II evaluation" means the evaluation process for nursing facility applicants who are identified as having a condition of mental illness or mental retardation as defined herein. The purpose of the Level II evaluation is to recommend placement of and services to nursing facility applicants with statutorily defined mental illness or mental retardation.

"Mental Illness (MI)" means a serious mental illness meeting all of the following requirements:

1. The individual has a major mental disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition, revised in 1987 that is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; somatoform disorder, personality disorder, other psychotic disorder, or another mental disorder that may lead to a chronic disability. The disorder is not a primary diagnosis of dementia, including Alzheimer's disease or a related disorder, or a non-primary diagnosis of dementia unless the primary diagnosis is a major mental disorder as defined here;

2. The disorder results in functional limitations in major life activities within the past three to six months that would be appropriate for the individual's developmental stage. An individual typically has at least one of the following characteristics on a continuing or intermittent basis:

a. Interpersonal functioning. The individual has serious difficulty interacting appropriately and communicating effectively with other persons, has a possible history of altercations, evictions, firing, fear of strangers, avoidance of interpersonal relationships, and social isolation;

b. Concentration, persistence, and pace. The individual has serious difficulty in sustaining focused attention for a long enough period to permit the completion of tasks commonly found in work settings or in work-like structures activities occurring in school or home settings, manifests difficulties in concentration, inability to complete simple tasks within an established time period, makes frequent errors, or requires assistance in the completion of these tasks; and

c. Adaptation to change. The individual has serious difficulty in adapting to typical changes in circumstances associated with work, school, family, or social interaction, manifests agitation, exacerbated signs and symptoms associated with the illness, or withdrawal from the situation, or requires intervention by the mental health or judicial system.

3. The treatment history indicates that the individual has experienced at least one of the following:

a. Psychiatric treatment more intensive than outpatient care more than once in the past two years (e.g., partial hospitalization or inpatient hospitalization); or

b. Within the last two years, due to the mental disorder, experienced an episode of significant disruption to the normal living situation, for which supportive services were required to maintain functioning at home, or in a residential treatment environment, or which resulted in intervention by housing or law enforcement officials.

"Mental Retardation (MR)" means the presence of a level of retardation (mild, moderate, severe, or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983) or has a related condition. A person with related conditions means the individual has a severe chronic disability that meets all of the following conditions:

1. It is attributable to cerebral palsy or epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;

2. It is manifested before the person reaches age 22;

3. It is likely to continue indefinitely; and

4. It results in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.

"MI/MR Supplement" means the assessment form developed to meet the requirements of OBRA '87. Its purpose is to identify individuals with mental illness and mental retardation before their admission to a nursing facility.

"New admission" means an individual who is admitted to any nursing facility for the first time or does not qualify as a readmission. New admissions are subject to preadmission screening.

"Non-Medicaid-eligible Individuals" means persons who are not Medicaid eligible or are not expected to be Medicaid eligible within 180 days of admission to a nursing facility.

"Nursing Home Preadmission Screening Committee (NHPASC)" means a committee established for the purpose of determining whether a Medicaid-eligible individual meets nursing facility criteria.

"Qualified Mental Health Professional (QMHP)" means a clinician in the health profession who is trained and experienced in providing psychiatric or mental health services to individuals who have a psychiatric diagnosis. In the Commonwealth, authorized professionals and minimal qualifications for a QMHP are as follows:

1. Physician: a doctor of medicine or osteopathy licensed in Virginia;

2. Psychiatrist: a doctor of medicine or osteopathy, specializing in psychiatry and licensed in Virginia;

3. Psychologist: an individual with a master's degree in psychology from an accredited college or university with at least one year of clinical experience;

4. Social worker: an individual with a master's or bachelor's degree from a school of social work accredited or approved by the Council on Social Work Education with at least one year of clinical experience;

5. Registered nurse: a registered nurse licensed in the State of Virginia with at least one year of clinical experience; and

6. Mental health worker: an individual with professional education, training, and/or a degree in human services or related field from an accredited college deemed equivalent to those described above and at least one year of clinical experience providing direct services to persons with a diagnosis of mental illness.

"Readmission" means an individual who was readmitted to a facility from a hospital to which he or she was transferred for the purpose of receiving care. Readmissions are subject to annual resident review rather than preadmission screening.

"State Mental Health or Mental Retardation Authority (MH/MRA)" means the designated representative of the Department of Mental Health, Mental Retardation and Substance Abuse Services who shall make determinations regarding placement of and services to nursing facility applicants who have conditions of mental illness or mental retardation.

§ 2. Persons subject to nursing home preadmission screening and identification of conditions of mental illness and mental retardation (Level I).

A. As a condition of a nursing facility's Medicaid participation, all persons applying for admission shall be screened to determine whether they have a condition of mental illness (MI) or mental retardation (MR), and if so, whether they require the level of services provided by a nursing facility (NF). Nursing facilities shall ensure that applicants for admission have been screened and those who are identified as being MI or MR are not admitted until determinations have been made by the State Mental Health or Mental Retardation Authority (MH/MHA) with respect to their placement. NHPASCs complete the Level I process for individuals who are Medicaid eligible or expect to become Medicaid eligible within 180 days. Nursing facilities must ensure that the appropriate screenings are conducted for non-Medicaid eligible applicants.

B. No individual, regardless of pay status, may be admitted to a nursing facility unless the Level I screening has been completed, and, if it is determined that the individual has a condition of MI or MR as defined herein, then he or she shall not be admitted until the Level II determination has been made.

C. The Level I identification function shall provide at least, in the case of first time identifications, for the issuance of written notice to the individual or resident and his or her legal representative if the individual is suspected of having MI or MR and is being referred to the MH/MRA for Level II screening. The NHPASC shall send this notice to Medicaid-eligible individuals who are referred for a Level II screening. The admitting NF shall send the notice to non-Medicaid individuals.

D. All Level I and Level II determinations shall be recorded in the individual's medical record.

E. When a preadmission screening has not been performed timely, but is performed at a later date, federal financial participation (FFP) is available only for services furnished after the screening has been performed.

F. The state in which the individual is a resident (or will be at the time he or she becomes eligible for Medicaid) must pay for the PASARR and make the required determinations. In the case of non-Medicaid eligible applicants, the receiving NF is responsible to ensure that the appropriate screenings have been completed prior to the individual's admission.

§ 3. Level II determination.

A. For each resident of a NF who has a condition of MI or MR, the MH/MRA, as appropriate, must determine whether the individual requires the level of services provided by a NF, an inpatient psychiatric hospital for individuals under age 21, an institution for mental disease (IMD) providing medical assistance to individuals age 65 and older, an intermediate care facility for the mentally retarded (ICF/MR), or specialized services for either MI or MR.

B. When a Level II evaluation is required, a determination shall be made within an annual average of seven to nine working days of the referral for screening. The MH/MRA shall convey determinations verbally to NFs and the individual and confirm them in writing.

C. The MH/MRA shall notify in writing the following entities of a Level II determination:

1. The evaluated individual and his or her legal representative;

2. The admitting or retaining NF;

3. The individual or resident's attending physician; and

4. The discharging hospital.

D. Each notice described above shall include the following:

1. Whether a NF level of services is needed;

2. Whether specialized services are needed;

3. The placement options available to the individual; and

4. The rights of the individual to appeal the determination.

§ 4. Categorical determinations.

A. For each individual for whom the Level I screening has resulted in the determination that the individual meets nursing facility level of care and has a condition of MI or MR as defined herein, a Level II evaluation does not have to be completed if one of the following categorical determinations are met:

1. The individual has a terminal illness in which a physician has documented that life expectancy is less than six months; or

2. The individual has a severe illness such as coma, functioning at brain stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from active treatment. When this category is used, documentation shall be available which fully describes the severity of the condition.

B. These categorical determinations shall only be applied following the Level I review and only if existing data on the individual appear to be current and accurate and are sufficient to allow the evaluator readily to determine that the individual fits the category.

§ 5. Annual resident review.

A. A review and determination must be conducted for each resident of a NF who has MI or MR not less often than annually. "Annually" is defined as occurring within every fourth quarter after the previous preadmission screening or annual resident review.

B. When an annual resident review has not been performed timely, but is performed at a later date, federal financial participation (FFP) is available only for services furnished after the review has been performed.

§ 6. Determinations and placement of individuals with MI or MR.

A. If the MH/MRA determines that a resident or applicant for admission to a NF requires a NF level of services, the NF may admit or retain the individual. If the MH/MRA determines that a resident or applicant for admission requires both a NF level of services and specialized services for MI or MR, the NF may admit or retain the individual and the state must provide or arrange for the provision of the specialized services needed by the individual while he resides in the NF.

B. If the MH/MRA determines that an applicant for admission to a NF does not require NF services, the applicant cannot be admitted. NF services are not a covered Medicaid service for that individual, and further screening is not required.

C. If the MH/MRA determines that a resident requires neither the level of services by a NF nor specialized services for MI or MR, regardless of the length of stay in the facility, the state must (i) arrange for the safe and orderly discharge of the resident from the facility; and (ii) prepare and orient the resident for discharge.

D. For any resident who has continuously resided in a NF for at least 30 months before the date of the determination, and who requires only specialized services, the state must, in consultation with the resident's family or legal representative and caregivers (i) offer the resident the choice of remaining in the facility or of receiving services in an alternative appropriate setting; (ii) inform the resident of the institutional and noninstitutional alternatives available; (iii) clarify the effect on eligibility for Medicaid services if the resident chooses to leave the facility, including its effect on readmission to the facility or eligibility for community-based services; and (iv) regardless of the resident's choice to remain in the NF or to be discharged to a community setting, provide for, or arrange for the provision of specialized services for the MI or MR.

E. For any resident who has not continuously resided in a NF for at least 30 months before the date of the determination, the state must, in consultation with the resident's family or legal representative and caregivers (i) arrange for the safe and orderly discharge of the resident from the facility; (ii) prepare and orient the resident for discharge; and (iii) provide for, or arrange for the provision of, specialized services for the MI or MR.

F. For the purposes of establishing length of stay in a NF, the 30 months of continuous residence in a NF or longer is calculated back from the date of the first annual resident review determination which finds that the individual is not in need of NF level of services. The 30 months of continuous residence in a NF may include temporary absences for hospitalization and therapeutic leave and may consist of consecutive residences in more than one NF.

G. Placement of an individual with MI or MR in a NF may be considered appropriate only when the individual's needs are such that he or she meets the minimum standards for admission and his or her needs for treatment do not exceed the level of services which can

be delivered in the NF to which the individual is admitted either through NF services alone or, where necessary, through NF services supplemented by specialized services provided by or arranged for by the state.

§ 7. PASARR evaluation criteria.

A. The state's PASARR program must identify all individuals who are suspected of having MI or MR as defined herein. The identification function and determination that NF criteria is met is termed Level I. Level II is the function of evaluating and determining whether NF placement is appropriate to meet the individual's MH/MR needs and whether specialized services are needed.

B. Evaluations performed under PASARR and PASARR notices must be adapted to the cultural background, language, ethnic origin, and means of communication used by the individual being evaluated. PASARR evaluations must involve the individual being evaluated, the individual's legal representative, if one has been designated under state law, and the individual's family if available and the individual or the legal representative agrees to family participation. When parts of a PASARR evaluation are performed by more than one evaluator, there must be interdisciplinary coordination among the evaluators.

C. All information that is necessary for determining whether it is appropriate for the individual with MI or MR to be placed in a NF or in another appropriate setting should be gathered throughout all applicable portions of the PASARR evaluation. The determinations relating to the need for NF level of care and specialized services are interrelated and must be based upon a comprehensive analysis of all data concerning the individual.

D. Evaluators may use relevant evaluative data, obtained prior to initiation of preadmission screening or annual resident review, if the data are considered valid and accurate and reflect the current functional status of the individual. However, in the case of individualized evaluations, the PASARR program may need to gather additional information to supplement and verify the currency and accuracy of existing data and to assess proper placement and treatment.

E. For individualized PASARR determinations, findings must be issued in the form of a written evaluative report which (i) identifies the name and professional title of person(s) who performed the evaluation(s) and the date on which each portion of the evaluation was administered; (ii) provides a summary of the medical and social history, including the positive traits or developmental strengths and weaknesses or developmental needs of the evaluated individual; (iii) if NF services are recommended, identifies the specific services which are required to meet the evaluated individual's needs; (iv) if specialized services are not recommended, identifies any specific MR or MH services which are of a lesser intensity than specialized services that are required to meet the evaluated individual's needs; (v) if specialized services are recommended, identifies the specific MR or MH services required to meet the evaluated individual's needs; and (vi) includes the basis for the report's conclusions.

F. For categorical PASARR determinations, findings must be issued in the form of an abbreviated written evaluative report which (i) identifies the name and professional title of the person applying the categorical determination and the data on which the application was made; (ii) explains the categorical determination(s) that has (have) been made; (iii) identifies, to the extent possible, based on the available data, NF services, including any mental health or specialized psychiatric rehabilitative services, that may be needed; and (iv) includes the bases for the report's conclusions.

G. For both categorical and individualized determinations, findings of the evaluation must correspond to the person's current functional status, mental health, and mental retardation status as documented in medical and social history records. Findings of the evaluation must be interpreted and explained to the individual and, where applicable, to a legal representative designed under state law by the assessment team or the MH/MRA. The evaluation report must be sent to the individual and his legal representative, appropriate state authority in sufficient time to meet the required time frames, admitting or retaining NF, individual's attending physician, and the discharging hospital if the individual is seeking NF admission from a hospital. The evaluation may be terminated at any time during the evaluation that the individual being evaluated does not have MI or MR or has a primary diagnosis of dementia or a nonprimary diagnosis of dementia without a primary diagnosis that is a serious mental illness, and does not have a diagnosis of MR or a related condition.

§ 8. Specialized services.

A. For mental illness, specialized services means the services specified by the state which, combined with services provided by the NF, results in the continuous and aggressive implementation of an individualized plan of care that:

1. Is developed and supervised by an interdisciplinary team which includes a physician, qualified mental health professionals, and as appropriate, other professionals;

2. Prescribes specific therapies and activities for the treatment of persons experiencing an acute episode of serious mental illness which necessitates supervision by trained mental health personnel;

3. Is directed toward diagnosing and reducing the resident's behavioral symptoms that may necessitate

institutionalization, improving his or her level of independent functioning, and achieving a functioning level that permits reduction in the intensity of mental health services to below the level of specialized services at the earliest possible time; and

4. Prescribes inpatient psychiatric services for any individual determined to be a danger to self or others. For nursing facility residents who are determined to be a danger to self or others due to mental illness, the nursing facility must coordinate admission to an inpatient psychiatric hospital.

B. For mental retardation, specialized services means the services specified by the state which, combined with services provided by the NF or other service providers, results in treatment which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed toward the following;

1. The acquisition of the behaviors necessary for the individual to function with as much self-determination and independence as possible; and

2. The prevention or deceleration of regression or loss of current optimal functional status.

C. The state must provide or arrange for the provision of specialized services to all NF residents with MI or MR whose needs are such that continuous supervision, treatment, and training by qualified MH/MR personnel is necessary as identified by their Level I and II assessments. The NF must provide MH or MR services which are of a lesser intensity than specialized services to all residents who need such services.

1. Services that shall be the responsibility of the nursing facility to provide to residents shall include, but are not limited to:

a. Physical therapy

b. Speech-language pathology services

c. Occupational therapy

d. Restorative nursing

e. Behavior management interventions that do not require ongoing consultation and monitoring by a licensed psychiatrist or psychologist

f. Basic grooming and hygiene needs

g. Nutritional needs, including supplements and assistance with eating

h. Adjustment needs resulting from admission to a nursing facility and ongoing psychosocial emotional support

i. Noncustomized durable medical equipment and supplies

2. Specialized services for the purposes of PASARR shall include the following. The State Mental Health or Mental Retardation Authority shall ensure the provision of specialized services when they are provided by a non-Medicaid-enrolled provider or when the services are not covered by Medicaid.

a. Partial hospitalization

b. Transportation to Medicaid-covered services or specialized services necessary to treat conditions of mental illness or mental retardation

c. Day health and rehabilitation

d. Psychosocial rehabilitation

e. Crisis intervention

f. Customized durable medical equipment, for residents without a patient pay, that would allow the resident to participate in specialized services

g. Behavior management interventions requiring ongoing consultation and monitoring by a licensed psychiatrist or psychologist

h. One-to-one supervision necessary for behavior management

i. Vision and hearing needs related to mental illness or mental retardation for persons over age 21

j. Dental needs resulting from mental illness or mental retardation sequela for persons over age 21

k. Habilitation

l. Supported employment for persons with mental illness or mental retardation

m. Case management services

n. Individual psychotherapy

o. Day treatment

p. Individual and group counseling

q. Inpatient psychiatric care

§ 9. Placement options.

A. The placement options and required state actions resulting from PASARR are as follows:

1. Can be admitted to a NF. Any applicant for admission to a NF who has MI or MR and who

requires the level of services provided by a NF, regardless of whether specialized services are also needed, may be admitted to a NF, if the placement is appropriate. If specialized services are also needed, the state is responsible for providing or arranging for the provision of the specialized services.

2. Cannot be admitted to a NF. Any applicant for admission to a NF who has MI or MR and who does not require the level of services provided by a NF, regardless of whether specialized services are also needed, is inappropriate for NF placement and must be not be admitted.

3. Can be considered appropriate for continued placement in a NF. Any NF resident with MI or MR who requires the level of services provided by a NF, regardless of the length of his or her stay or the need for specialized services, can continue to reside in the NF, if the placement is appropriate.

4. May choose to remain in the NF even though the placement would otherwise be inappropriate. Any NF resident with MI or MR who does not require the level of services provided by the NF but does require specialized services and who has continuously resided in a NF for at least 30 consecutive months before the date of determination may choose to continue to reside in the facility or to receive covered services in an alternative appropriate institutional or noninstitutional setting. Wherever the resident chooses to reside, the state must meet his or her specialized services needs. The determination notice must provide information concerning how, when, and by whom the various placement options available to the resident will be fully explained to the resident.

5. Cannot be considered appropriate for continued placement in a NF and must be discharged (short-term residents). Any NF resident with MI or MR who does not require the level of services provided by a NF but does require specialized services and who has resided in a NF for less than 30 consecutive months be discharged to an appropriate setting where the state must provide specialized services. The determination notice must provide information on how, when, and by whom the resident will be advised of discharge arrangements and of his/her appeal rights under both PASARR and discharge provisions.

6. Cannot be considered appropriate for continued placement in a NF and must be discharged (short or long-term residents). Any NF resident with MI or MR who does not require the level of services provided by a NF and does not require specialized services regardless of his or her length of stay, must be discharged. The determination notice must provide information on how, when and by whom the resident will be advised of discharge arrangements and of his or her appeal rights under both PASARR and discharge provisions.

7. Specialized services needed in a NF. If a determination is made to admit or allow to remain in a NF any individual who requires specialized services, the determination must be supported by assurances that the specialized services that are needed can and will be provided or arranged for in a timely manner by the state which the individual resides in the NF.

B. The state PASARR system shall maintain records of evaluations and determinations, regardless of whether they are performed categorically or individually, in order to support its determinations and actions and to protect the appeal rights of individuals subjected to PASARR. The state PASARR system shall establish and maintain a tracking system for all individuals with MI or MR in NFs to ensure that appeals and future reviews are performed.

§ 10. Evaluating the need for NF services and NF level of care (PASARR/NF).

A. For each applicant for admission to a NF and each NF resident who has MI or MR, the evaluator must assess whether (i) the applicant's or resident's total needs are such that his needs can be met in an appropriate community setting; (ii) the individual's total needs are such that they can be met only on an inpatient basis, which may include the option of placement in a home and community-based services waiver program, but for which the inpatient care would be required; (iii) if inpatient care is appropriate and desired, the NF is an appropriate institutional setting for meeting those needs; or (iv) if the inpatient care is appropriate and desired but the NF is not the appropriate setting for meeting the individual's needs, another setting such as an ICF/MR (including small, community-based facilities), an IMD providing services to individuals ages 65 or older, or a psychiatric hospital is an appropriate institutional setting for meeting those needs.

B. In determining appropriate placement, the evaluator must prioritize the physical and mental needs of the individual being evaluated, taking into account the severity of each condition.

C. At a minimum the data relied on to make a determination must include: (i) evaluation of physical status (for example, diagnoses, date of onset, medical history, and prognosis); (ii) evaluation of mental status (for example, diagnoses, date of onset, medical history, likelihood that the individual may be a danger to himself/herself or others); and (iii) functional assessment (activities of daily living).

D. Based on the data compiled, the MH/MRA must determine whether an NF level of services is needed.

§ 11. Evaluating whether an individual with MI requires specialized services (PASARR/MI).

A. The purpose of this section is to identify the minimum data needs and process requirements for the state MHA, which is responsible for determining whether or not the applicant or resident with MI needs a specialized services program for mental illness.

B. Minimum data collected must include:

1. A comprehensive history and physical examination of the person. If the history and physical examination are not performed by a physician, then a physician must review and concur with the conclusions. The following areas must be included (if not previously addressed): complete medical history; review of all body systems; specific evaluation of the person's neurological system in the areas of motor functioning, sensory functioning, gait, deep tendon reflexes, cranial nerves, and abnormal reflexes; and in case of abnormal findings which are the basis for a NF placement, additional evaluations conducted by appropriate specialists.

2. A comprehensive drug history including current or immediate past use of medications that could mask symptoms or mimic mental illness.

3. A psychological evaluation of the person, including current living arrangements and medical and support systems.

4. A comprehensive psychiatric evaluation including a complete psychiatric history, evaluation of intellectual functioning, memory functioning, and orientation, description of current attitudes and overt behaviors, affect, suicidal or homicidal ideation, paranoia, and degree of reality testing (presence and content of delusions) and hallucinations.

5. A functional assessment of the individual's ability to engage in activities of daily living and the level of support that would be needed to assist the individual to perform these activities while living in the community. The assessment must determine whether this level of support can be provided to the individual in an alternative community setting or whether the level of support needed is such that NF placement is required. The functional assessment must address the following areas: Self-monitoring of health status, self-administering and scheduling of medical treatment, including medication compliance, or both, self-monitoring of nutritional status, handling money, dressing appropriately, and grooming.

C. The state may designate the mental health professionals who are qualified to perform the evaluations required including the comprehensive drug history; psychosocial evaluation; comprehensive psychiatric evaluation; functional assessment; and to make the determination required.

D. Based on the data compiled, a qualified mental health professional, as designated by the state, must validate the diagnosis of mental illness and determine whether a program of psychiatric specialized services is needed.

§ 12. Evaluating whether an individual with MR requires specialized services (PASARR/MR).

A. The purpose of this section is to identify the minimum data needs and process requirements for the state MRA to determine whether or not the applicant or resident with mental retardation needs a continuous specialized services program. Minimum data collected must include the individual's comprehensive history and physical examination results to identify the following information or, in the absence of data, must include information that permits a reviewer specifically to assess:

1. The individual's medical problems;

2. The level of impact these problems have on the individual's independent functioning;

3. All current medications used by the individual and the current response of the individual to any prescribed medications in the following drug groups: hypnotics, antipsychotics (neuroleptics), mood stabilizers and antidepressants, antianxiety-sedative agents, and anti-Parkinsonian agents.

4. Self-monitoring of health status;

5. Self-administering and scheduling of medical treatments;

6. Self-monitoring of nutritional status;

7. Self-help development such as toileting, dressing, grooming, and eating;

8. Sensorimotor development, such as ambulation, positioning, transfer skills, gross motor dexterity, visual motor perception, fine motor dexterity, eye-hand coordination, and extent to which prosthetic, orthotic, corrective or mechanical supportive devices can improve the individual's functional capacity;

9. Speech and language (communication) development, such as expressive language (verbal and nonverbal), receptive language (verbal and nonverbal), extent to which nonoral communication systems can improve the individual's function capacity, auditory functioning, and extent to which amplification devices (e.g. hearing aid) or a program of amplification can improve the individual's functional capacity;

10. Social development, such as interpersonal skills, recreation-leisure skills, and relationships with others;

11. Academic/educational development, including functional learning skills;

12. Independent living development such as meal preparation, budgeting and personal finances, survival skills, mobility skills (orientation to the neighborhood, town, city), laundry, housekeeping, shopping, bed making, care of clothing, and orientation skills (for individuals with visual impairments);

13. Vocational development, including present vocational skills;

14. Affective development such as interests, and skills involved with expressing emotions, making judgments, and making independent decisions; and

15. The presence of identifiable maladaptive or inappropriate (including, but not limited to, the frequency and intensity of identified maladaptive or inappropriate behaviors).

B. The state must ensure that a licensed psychologist identifies the intellectual functioning measurement of individuals with MR or a related condition. Based on the data compiled, the MRA, using appropriate personnel as designated by the state, must validate that the individual has MR or is a person with a related condition and must determine whether specialized services for MR are needed. In making this determination, the MHA must make a qualitative judgment on the extent to which the person's status reflects, singly and collectively, the characteristics commonly associated with the need for specialized services, including:

1. Inability to take care of most personal care needs; understand simple commands; communicate basic needs and wants; be employed at a productive wage level without systematic long term supervision or support; learn new skills without aggressive and consistent training; apply skills learned in a training situation to other environments or settings without aggressive and consistent training; demonstrate behavior appropriate to the time, situation or place without direct supervision; and make decisions requiring informed consent without extreme difficulty;

2. Demonstration of severe maladaptive behavior(s) that place the person or others in jeopardy to health and safety; and

3. Presence of other skill deficits or specialized training needs that necessitate the availability of trained MR personnel, 24 hours per day, to teach the person functional skills.

§ 13. Appeals.

A. Following notification to the NF of the Level II assessment determination by the state MH/MRA, the NF must inform the individual of the decision indicating the reasons for acceptance or denial. Any individual, regardless of method of payment, who wishes to appeal the decision of the Level II evaluation may do so by sending written notification to the Department of Medical Assistance Services, Division of Client Appeals.

B. Decisions made by the annual resident review teams shall also be appealable to DMAS. The reviewed individual shall send written notification to DMAS, Division of Client Appeals.

C. All appeal requests must be made within 30 days of the individual's notification of the review decision.

VA.R. Doc. No. R94-340; Filed December 8, 1993, 11:50 a.m.

VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES MI/MR SUPPLEMENT LEVEL I

A. This section is to be completed by the Nursing Home Preadmission Screening Committee.

Name _____ Date of Birth _____ Date NHPAS Request Received _____
Social Security Number _____ Medicaid Number _____ Responsible CSB _____

1. **DOES THE INDIVIDUAL MEET NURSING FACILITY CRITERIA?** ____ yes ____ no (If "yes", this form must be completed. If "no", do not complete Level I screening and do not refer for Level II evaluation. Individual cannot be admitted to a Medicaid-enrolled nursing facility.)

2. **DOES THE INDIVIDUAL HAVE A CURRENT SERIOUS MENTAL ILLNESS (MI)?** ____ **yes** (☑ "yes" **only** if a, b, **and** c below are checked "yes") ____ **no** (If "no", do not refer for Level II PAS for MI) Diagnosis: _____

   a. Is this major mental disorder diagnosable under DSM-III-R (e.g., schizophrenia, mood, paranoid, panic, or other serious anxiety disorder; somatoform disorder; personality disorder; other psychotic disorder; or other mental disorder that may lead to a chronic disability)?
   _____ yes _____ no

   b. Has the disorder resulted in functional limitations in major life activities within the past 3-6 months, particularly with regard to interpersonal functioning; concentration, persistence, or pace; and adaptation to change? _____ yes _____ no

   c. Does the treatment history indicate that the individual has experienced psychiatric treatment more intensive than outpatient care more than once in the past 2 years or the individual has experienced within the last 2 years an episode of significant disruption to the normal living situation due to the mental disorder? _____ yes _____ no

3. **DOES THE INDIVIDUAL HAVE A DIAGNOSIS OF MENTAL RETARDATION (MR) WHICH WAS MANIFESTED BEFORE AGE 18?**
   _____ **yes** _____ **no**

4. **DOES THE INDIVIDUAL HAVE A RELATED CONDITION?** _____ **yes** (☑ "yes" **only** if each item below is checked "yes") _____ **no** (If "no", do not refer for Level II PAS for related condition)

   a. Is the condition attributable to any other condition (e.g., cerebral palsy, epilepsy, autism, muscular dystrophy, multiple sclerosis, Frederick's ataxia, spina bifida), other than MI, found to be closely related to MR because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of MR persons and requires treatment or services similar to those for these persons?
   _____ yes _____ no

   b. Has the condition manifested before age 22? _____ yes _____ no

   c. Is the condition likely to continue indefinitely? _____ yes _____ no

   d. Has the condition resulted in substantial limitations in 3 or more of the following areas of major life activity (circle applicable areas): self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living? _____ yes _____ no

5. **RECOMMENDATION (Either "a" or "b" MUST be checked.)**

   a. ☐ **Refer for Level II assessment for:**
      ____ **MI** (#2 above is checked "yes")
      ____ **MR or Related Condition** (#3 or #4 is checked "yes")
      ____ **Dual diagnosis** (MI and MR/Related Condition categories are checked)
      NOTE: If 5a is checked, the individual may NOT be admitted to a nursing facility until the State Mental Health/Mental Retardation Authority has provided written approval that the individual's needs can be met in the nursing facility.

      Date Referral Package Sent: _____ CSB/Agency Pkg. Sent To: _____
      Contact Person: _____ Address: _____ Phone #: _____

   b. ☐ **No referral for Level II needed because individual:**
      ____ Does not meet the applicable criteria for serious MI or MR or related condition
      ____ Has a primary diagnosis of dementia (including Alzheimer's disease) and does not have a diagnosis of MR
      ____ Has a primary diagnosis of dementia (including Alzheimer's disease) **AND** has a secondary diagnosis of a serious MI
      ____ Has a severe physical illness (e.g., documented evidence of coma, functioning at brain-stem level, or other conditions which result in a level of impairment so severe that the individual could not be expected to benefit from specialized services)
      ____ Is terminally ill (note: a physician must have documented that individual's life expectancy is less than 6 months)

_____ _____ _____
Signature Title Screening Committee

_____ _____ _____
Date Telephone Number Street Address

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VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
MI/MR SUPPLEMENT: LEVEL II

Name _____ **Screening Placement Recommendation** _____

B. This section is to be completed by the Community Services Board or other entity under contract for Level II evaluation process.

1. **EVALUATIONS REQUIRED UPON RECEIPT OF REFERRAL** (Check evaluations submitted upon receipt of referral.)

____ Neurological Evaluation
____ Psychological Assessment
____ Psychiatric Assessment
____ Psychosocial/Funtional Assessment
____ History and Physical Examination
____ Other (please specify) _____

2. RECOMMENDATION

____ Specialized services are not indicated.

____ Specialized services are indicated.

Comments: _____

3. **Date referral package received:** _____ **Date package sent to DMHMRSAS:** _____

QMHP Signature (MI diagnosis)	Date	Telephone Number
Psychologist Signature (MR diagnosis)	Date	Telephone Number
Case Manager Signature/Title	Date	Telephone Number
Agency/Facility Name		Agency/Facility ID# (if applicable)
Mailing Address		

C. THIS SECTION IS TO BE COMPLETED ONLY BY THE THE DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES.

Date referral package received: _____ **Concur with recommendations of specialized services?** ____ **yes** ____ **no**

Comments: _____

Copies of referral package sent to:	**Representative's Name:**	**Date Package Sent:**
___ PAS representative		
___ Community Services Board		
___ Admitting/retaining nursing facility		
___ Discharging hospital (if applicable)		
___ Individual being evaluated*		
___ Individual's family		
___ Individual's legal representative (if any)*		
___ Attending physician		

*Appeals information included.

Signature of State MH/MRA	**Title**	**Date**	**Telephone Number**

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MR/MR SUPPLEMENT INSTRUCTIONS

IDENTIFYING DATA

NAME: Last, first, and middle. **DATE OF BIRTH:** Month, date, and year.
SOCIAL SECURITY NUMBER: 9-digit number assigned. **MEDICAID NUMBER:** 12-digit benefit number assigned.
RESPONSIBLE CSB: The Community Services Board in the locality in which the individual resides.
DATE NHPAS REQUEST RECEIVED: The date that a request for a Level I screening was made.

1. Indicate whether the individual meets nursing facility criteria as described in the Virginia Medicaid Nursing Home or Preadmission Screening Manuals. If "yes" is checked, complete the screening. If the individual does NOT meet nursing facility criteria, do not complete Level I screening and do not refer for Level II evaluation. If criteria is not met, the individual cannot be admitted to a nursing facility.

2. **Determination of Serious Mental Illness (MI):** Check "yes" (that the individual has a current diagnosis of serious MI) only if 2.a., b., **and** c. are checked "yes". Indicate the diagnosis if "yes" is checked. If "no" is checked for either a., b., or c. below, do not refer for Level II for MI.

   a. Check "yes" if the individual has a major mental disorder diagnosable under DSM-III-R (e.g., schizophrenia (including disorganized, catatonic, and paranoid types); mood (including bipolar disorder (mixed, manic, depressed, seasonal, NOS); major depression (single episode/recurrent, chronic, melancholic or seasonal), depressive disorder NOS; cyclothymia; dysthymia (primary/secondary or early/late onset); paranoid (including delusional, erotomanic, grandiose, jealous, persecutory, somatic, unspecified, or induced psychotic disorder); panic or other severe anxiety disorder (including panic disorder with agoraphobia, agoraphobia with or without history of panic disorder, social phobia, generalized anxiety disorder, obsessive compulsive disorder, past-traumatic stress disorder); somatoform disorder (includes somatization disorder, conversion disorder, somatoform pain disorder, hypochondriasis, body dysmorphic disorder, undifferentiated somatoform disorder, somatoform disorder NOS); personality disorder (includes paranoid, schizoid, schizotypal, histrionic, narcissistic, antisocial, borderline, avoidant, dependent, obsessive compulsive, passive aggressive, and NOS); other psychotic disorder (includes schizophreniform disorder, schizoaffective disorder (bipolar/depressive), brief reactive psychosis, atypical, NOS); or other mental disorder that may lead to a chronic disability).

   b. Check "yes" if the individual has a mental disorder that has resulted in functional limitations in major life activities within the past 3-6 months, particularly with regard to interpersonal functioning; concentration, persistence, and pace; and adaptation to change.

   c. Check "yes" if the individual's treatment history indicates that he or she has experienced (1) psychiatric treatment more intensive than outpatient care more than once in the past 2 years or (2) within the last 2 years, an episode of significant disruption to the normal living situation due to the mental disorder.

3. **Determination of Mental Retardation (MR):** Check "yes" if the individual has a level of retardation (mild, moderate, severe, or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983) that was manifested before age 18.

4. **Determination of Related Conditions:** Check "yes" only if **each** item in 4 a-d below is checked. If "no" is checked, do not refer for Level II PAS for related conditions.

   a. Check "yes" if the condition is attributable to any other condition (e.g., cerebral palsy, epilepsy, autism, muscular dystrophy, multiple sclerosis, Frederick's ataxia, spina bifida), other than MI, found to be closely related to MR because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of MR persons and requires treatment or services similar to those for these persons.
   b. Check "yes" if the condition has manifested before age 22.
   c. Check "yes" if the condition is likely to continue indefinitely.
   d. Check "yes" if the condition has resulted in substantial limitations in 3 or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living. Circle the applicable areas.

5. **RECOMMENDATION** (Either 5a or b **MUST** be checked.)

   a. Check this category if Question 2 is checked "yes" AND/OR either Question 3 or 4 is checked "yes". Indicate whether referral is for MI or MR, the date the package is referred to the CSB, and where and to whom the package is sent. An individual for whom 5a has been checked may NOT be admitted to a NF until the State Mental Health/Mental Retardation Authority has determined that NF placement is appropriate.

   b. Check this "no referral needed" category **ONLY** if there is documented evidence as follows:
      - Does not meet the applicable criteria for MI or MR or a related condition
      - Has a primary diagnosis of dementia (including Alzheimer's disease). (If there is a diagnosis of MR, this category does not apply.)
      - Has a primary diagnosis of dementia (including Alzheimer's disease) AND a secondary diagnosis of MI
      - Has a severe physical illness (e.g., documented evidence of coma, functioning at brain-stem level, or other diagnoses which result in a level of impairment so severe that the individual could not be expected to benefit from specialized services. If the assessor determines that an illness not listed here is so severe that the individual could not be expected to benefit from specialized services, documentation describing the severe illness must be attached for review.)
      - Is terminally ill (note: a physician must have documented that individual's life expectancy is less than 6 months)

NOTE: WHEN A SCREENING HAS NOT BEEN PERFORMED PRIOR TO AN INDIVIDUAL'S ADMISSION TO A NF IN A TIMELY MANNER, FEDERAL FINANCIAL PARTICIPATION (FFP) IS AVAILABLE ONLY FOR SERVICES FURNISHED AFTER THE SCREENING HAS BEEN PERFORMED.

ASSESSOR INFORMATION

SIGNATURE: First name, middle initial, and last name. **TITLE:** Professional title of the assessor.
SCREENING COMMITTEE: Name/locality of screening committee.
DATE: Date screening was completed. **TELEPHONE NUMBER:** Telephone number, including area code, where assessor may be reached.
STREET ADDRESS: Complete street address, including city, state, and zip code, of the assessor for express mail delivery.

* * * * * * * * *

REGISTRAR'S NOTICE: Due to the length, only the amended page of the following regulation is being published; however, a summary is being published in lieu of the full text. The full text of the regulation is available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia, 23219 and at the Office of the Registrar of Regulations, Virginia Code Commission, General Assembly Building, 910 Capitol Street, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **VR 460-02-2.6100:1. Eligibility Conditions and Requirements: Guardianship Fees in Post-Eligibility Treatment of Income.**

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

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section
for additional information)

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. Section 9-6.14:9 of the Administrative Process Act (APA) also provides for this agency's promulgation of proposed regulations subject to the Department of Planning and Budget's and Governor's reviews.

Federal regulations at 42 CFR 435.733 and 435.735 describe the requirements for the post-eligibility treatment of income and resources of institutionalized individuals and the application of patient income to the cost of care. They describe the methodology for calculating the amount of Medicaid payments for long-term care services, both institutional and home- and community-based waiver services for Medicaid eligible individuals. The regulations require that the amount of Medicaid payment must be reduced by the amount that remains after deducting the amounts specified from the individual's total income. These regulations also describe how much of the patient's own income he must apply toward the monthly bill for institutional or waiver services and how much he may retain to pay for certain other "allowable" expenses. Within these regulations, the state is required to deduct an amount that is reasonable for clothing and other personal needs. The regulations specify that the personal needs allowance cannot be less than $30 per month for an individual and $60 per month for a couple. However, the personal needs allowance may be higher than this amount if the state determines that additional funds are needed for maintenance.

Purpose: The purpose of this proposal is to provide in the State Plan for the deduction of guardianship fees as part of the personal needs allowance for individuals whose guardians deduct fees from the individual's income as permitted by state law.

Summary and Analysis: The section of the State Plan affected by this regulatory action is Attachment 2.6-A, Eligibility Conditions and Requirements (VR 460-02-2.6100:1).

Medicaid eligibility policy has long allowed deduction of guardianship fees in determining countable income for the purposes of calculating patient pay for institutional and home- and community-based waiver services. This policy has not, however, been reflected in the State Plan. Patient pay is the portion of the patient's income which must be applied to the cost of institutional and home- and community-based waiver services before Medicaid is billed. It is computed by the eligibility worker based upon federal regulations found at 42 CFR 435.733 and 435.735. These regulations specify the kinds of expenses for which a patient will be permitted to retain personal income to pay, before any of his income is determined to be available to apply to the cost of care. One of these expenses is personal needs like clothing or other personal expenses. States are allowed to set the personal needs allowance at an amount not less than $30. States may exceed this amount if the expenses are "reasonable."

Some institutional and home- and community-based waiver services recipients have guardians. State law permits guardians to charge fees for the services they perform on behalf of incompetent individuals whom they represent. Since a guardian has control of an individual's income, he deducts his fee before any of the income is applied to the bills of an incompetent individual. Thus, this income is not available to be applied to the cost of institutional and home- and community-based waiver services.

Because expenses allowed as part of the personal needs allowance must be "reasonable," a maximum allowance is placed on guardianship fees of 5.0% of total income. State law does not place a maximum amount limit on guardianship fees, but an informal inquiry of guardians resulted in an estimate of an average of 5.0% as being a reasonable allowance.

If Medicaid does not add guardianship fees to the personal needs allowance, then Medicaid calculations of the patient's income available for patient pay will exceed that amount actually available and Medicaid will not pay the full balance of the institutional and home- and community-based waiver services bill. The result will be an outstanding balance for the institutional and home- and community-based waiver services that the provider can collect neither from the patient nor from Medicaid.

The Medicaid eligibility policy has recognized that the income available for patient pay is the net income after deduction of guardianship fees. This long-standing policy was based upon interpretation of the way in which the Social Security Administration calculates income for eligibility for Supplemental Security Income. In a recent

appeal, the Medical Assistance Appeal Panel found that this interpretation did not cover all instances in which a guardian might charge a fee. The Health Care Financing Administration issued an instruction that confirmed that guardianship fees are allowable deductions, but directed states to specify that deduction in the State Plan for Medical Assistance. This regulatory change is designed to specify the deduction of guardianship fees as required by the Health Care Financing Administration and will ensure that the deductions are applied uniformly to all recipients of institutional and home- and community-based waiver services who pay guardianship fees.

Impact: Medicaid policy presently permits the deduction of guardianship fees in the calculation of patient pay for institutional and home- and community-based waiver services. This regulation simply itemizes guardianship fees among allowable costs that are reasonable as part of the personal needs allowance. Since this is a technical change to record in the State Plan a long-standing policy, no fiscal or programmatic impact is anticipated.

Issues: Because this is a technical change to record current policy, this agency sees no negative issues involved in implementing this proposed change. This change represents no advantages or disadvantages because there is no change in policy.

Summary:

This amendment specifies the deduction of guardianship fees as required by the Health Care Financing Administration and ensures that the deductions are applied uniformly to all recipients of institutional and home- and community-based waiver services who pay guardianship fees.

VR 460-02-2.6100:1. Eligibility Conditions and Requirements.

Citation: 435.725, 435.733, 435.832.

B. Post-eligibility treatment of institutionalized individuals.

The following amounts are deducted from gross income when computing the application of an individual's or couple's income to the cost of institutional care:

1. Personal needs allowance.

a. Aged, blind, disabled:

Individuals $30

Couples $60

For the following individuals with greater need:

(1) Patients in institutions who participate in work programs as part of treatment. The first $75 of earnings plus 1/2 the remainder, up to a maximum of $190 monthly is allowed to be retained for personal needs.

(2) Patients receiving institutional or home- and community-based waiver services who pay guardianship fees, the actual cost of guardian fees up to a maximum of 5.0% of gross income.

b. AFDC related:

Children $30

Adults $60

c. Individuals under age 21 covered in this plan as specified in Item b.7 of ATTACHMENT 2.2-A. ... $30

2. For maintenance of the noninstitutionalized spouse only. The amount must be based on a reasonable assessment of need but must not exceed the highest of:

SSI level ..... $.....

SSP level ..... $.....

Monthly medically needy level ..... $.....

Other as follows ..... $.....

See Attachment 2.6 A pages 5a and 5b.

VA.R. Doc. No. R94-303; Filed November 29, 1993, 3:27 p.m.

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Title of Regulation: **State Plan for Medical Assistance Relating to Criteria for Preadmission Screening and Continued Stay.**
VR 460-03-3.1100. Narrative for the Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A & B).
VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C).
VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement 1 to Attachment 3.1 C).
VR 460-04-3.1300. Outpatient Physical Rehabilitative Services Regulations.
VR 460-04-8.10. Regulations for Long-Stay Acute Care Hospitals.

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

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

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. Section 9-6.14:7.1 of the Administrative Process Act (APA) also provides 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, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

Purpose: The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations containing the same policies. These regulations concern the criteria by which applicants for and recipients of long-term care services and community-based care services are evaluated for appropriate placement.

Summary and Analysis: The sections of the State Plan for Medical Assistance affected by this proposed action are: Amount, Duration, and Scope of Services Narrative (Supplement 1 to Attachment 3.1 A&B), Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C), Nursing Facility Criteria (Supplement 1 to Attachment 3.1 C). The non-State Plan regulations affected by this action are: Regulations for Outpatient Physical Rehabilitative Services (VR 460-04-3.1300) and Regulations for Long-Stay Acute Care Hospitals (VR 460-04-8.10).

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 through June 18, 1993. DMAS held four public hearings in different statewide locations and received numerous comments from individuals and organizations. These initial proposed regulations were substantially similar to the preceding emergency regulations. Commenters on those emergency regulations expressed a belief that they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the department's research demonstrated that there had not been discharges from nursing facilities based on those emergency regulations, it was clear that the department's intent to clarify medical/nursing management had not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to the Code of Virginia § 9-6.14:4.1 et seq. (Administrative Process Act (APA)), DMAS was required to promulgate a second set of emergency regulations. DMAS is now reinitiating the Article 2 process (§ 9-6.14:7.1) to conform to the new APA promulgation requirements.

Due to the significant comments DMAS received on the prior proposed regulations, the second set of emergency regulations contained revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home- and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future except for the provision of community-based services. In the currently effective emergency regulations, DMAS established the criteria which define when an individual can be determined to be at risk of nursing facility placement in the near future as "prenursing facility criteria." These proposed regulations mirror the current emergency regulations on which the agency has received no comments.

Nursing home preadmission screening was implemented in Virginia in 1977 to ensure that Medicaid-eligible individuals placed in nursing homes actually required nursing home care. In 1982, DMAS obtained approval for a § 2176 home- and community-based care waiver to allow individuals who have been determined to require nursing facility services an alternative to nursing home placement. This home- and community-based care alternative to nursing home care includes personal care, respite care, and adult day health care services.

In 1989, DMAS revised a portion of the regulations related to nursing home preadmission screening to incorporate the requirement to screen all individuals for conditions of mental illness or mental retardation.

Long-term care is the fastest growing expense in Medicaid's budget. Nursing home preadmission screening is the mechanism designed to prevent inappropriate utilization of Medicaid-funded long-term care services. The goal of nursing home preadmission screening is to assess an individual's need for long-term care services. About 1982, DMAS originally developed criteria for nursing facility care based upon the Long-Term Care Information Assessment Process (DMAS-95). These criteria enabled physicians, nursing home preadmission screening committees, medical review teams, and hospital and nursing facility discharge personnel to apply standards for facility admission consistently. Any individual whose care needs did not meet these criteria did not qualify for Medicaid-funded nursing facility services.

Section 32.1-330 of the Code of Virginia designates that the definition for eligibility to community-based services will be included in the State Plan for Medical Assistance. Previous State Plan nursing facility criteria have always required an evaluation of both an individual's functional and nursing needs; however, regulations in existence before the current emergency regulations contained conflicting language. One section indicated that both functional capacity and nursing needs had to be met in order to authorize nursing facility level of care. Another section stated that the individual could be determined appropriate for nursing facility care when they met a category of functional dependency. The current emergency

regulations and this proposed regulation remove this confusion by stating clearly that both functional dependency and medical and nursing needs must be present and that imminent risk of institutionalization must be documented in order for an individual to qualify for nursing facility care.

Another difficulty with the previous regulations was the lack of definition of medical and nursing need. In the previous preadmission screening regulations, nursing needs were defined only by example of the types of nursing services which indicate a need for nursing facility care. The previous emergency regulation added a definition for medical and nursing need which was widely misinterpreted by the screening community as requiring that the person need a skilled nursing procedure. The proposed regulation revises the definition for medical and nursing needs which was added in the previous emergency regulation to clarify the need for nursing/medical supervision as well as several of the types of services which are provided by licensed nursing or professional personnel.

The current emergency regulations, as did the previous emergency regulation, contain additional sections which summarize the requirements to be met to find an individual eligible for nursing facility care and/or community-based care. The evaluation section clarifies specific criteria for determining when an individual is at risk of nursing home placement and can be authorized for community-based care placement. In addition language has been added which defines when an individual can be determined to be in need of nursing facility services in the near future except for the provision of community-based services. This definition is termed "prenursing facility criteria" and describes those individuals whose care needs exceed what can typically be provided by existing community resources and which, if not met, will result in the individual's need for nursing facility placement.

The Omnibus Budget Reconciliation Act (OBRA) of 1987 required that states specify a resident assessment instrument by which all nursing facility residents were to be assessed. The Commonwealth proposed that the preadmission screening assessment instrument be that instrument for Virginia but the Health Care Financing Administration (HCFA) did not approve its use. Therefore, effective March 27, 1991, Virginia implemented HCFA's Resident Assessment Instrument (RAI) as the official state instrument. The Minimum Data Set (MDS) is a component of the RAI. The MDS achieves the federally mandated purpose of resident assessment for the purpose of care planning. In addition, to reduce paperwork demands of nursing facility providers, DMAS has also adopted its use for continued stay evaluations to replace the preadmission screening instrument.

The criteria based on the MDS mirror the criteria in the preadmission screening instrument. Even though it was not possible to match all items between the two forms exactly, efforts were made to accommodate variations in criteria items to the extent possible. The data analysis indicates that there is no significant difference between the two assessment instruments.

Nursing home preadmission screening committees will still use a separate assessment instrument for preadmission screening, the purpose of which is to determine appropriate medical care needs and proper placement in the continuum of care between community services and institutionalization.

Rehabilitation Services

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows:

Attachment 3.1 A & B, Supplement 1

The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are noncovered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2, Outpatient hospital services and § 5, Physicians services).

The Program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

Attachment 3.1 C

The modification to outpatient rehabilitative services is also reflected in this attachment. DMAS will periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. This is changed from the requirement that assessments be conducted annually. The change to recognize the provision of psychological services by supervised licensed clinical social workers is also reflected in this Plan section.

VR 460-04-3.1300

The reference to the Rehabilitation Treatment Authorization form (DMAS-125) is deleted for outpatient rehabilitative services.

Supervision of Licensed Clinical Social Workers - VR 460-04-8.10 (Long-stay Acute Care Hospital Regulations)

The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in these state-only regulations.

Issues: The primary issue in this regulatory package is the even and equitable application of criteria for preadmission screening across all Medicaid applicants of the Commonwealth. DMAS found that some local screening teams had inappropriately approved applicants for Medicaid-covered long-term care services, both nursing facility care and home- and community-based care waiver services. Providing Medicaid coverage to such individuals whose situations did not meet the department's criteria for coverage misdirected already scarce resources.

Impact: The impact on affected persons of this proposed regulation, which mirrors the currently effective emergency regulations, will be that fewer inappropriate admissions to Medicaid-covered long-term care services will be approved by local preadmission screening teams. This will result from a more consistent interpretation and application of DMAS' preadmission screening policies. This package addresses the following issues:

Preadmission Screening:

This component implements clarifications to the definition of medical/nursing need and the evaluation of persons seeking community-based care. The Commonwealth implemented the clarifications included in these regulations under the emergency regulations effective June 29, 1993. The intended impact of these regulations is to allow continued consistency in application of nursing facility criteria and the department's ability to be sustained in action appealed based upon clear and consistent regulations. The only cost impact related to these regulations was the cost of statewide training for nursing home preadmission screening teams and providers. These costs were covered through training registration fees.

The part of the package related to nursing facility assessment surveys allows DMAS more flexibility in the frequency of conducting nursing facility surveys. Actual frequency will be set based on DMAS staffing levels.

Rehabilitation Services:

There will not be any fiscal impact associated with the segment related to outpatient rehabilitation services, as the new regulations merely clarify and improve the consistency of the old regulations. There is no substantive change in the preauthorization process. The current process mirrors the old one and will not lead to a change in the scope or duration of rendered services.

Supervision of Licensed Clinical Social Workers

The component dealing with services provided by a licensed clinical social worker will not change the number of billing providers and thus keeps the total expenses incurred by DMAS unchanged.

Summary:

The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations containing the same policies. These regulations concern the criteria by which applicants for and recipients of long-term care services and community-based care services are evaluated for appropriate placement.

The sections of the State Plan for Medical Assistance affected by this proposed action are: Amount, Duration, and Scope of Services Narrative (Supplement 1 to Attachment 3.1 A&B), Standards Established and Methods Used to Assure High Quality of Care (Attachment 3.1 C), Nursing Facility Criteria (Supplement 1 to Attachment 3.1 C). The non-State Plan regulations affected by this action are: Regulations for Outpatient Physical Rehabilitative Services (VR 460-04-3.1300) and Regulations for Long-Stay Acute Care Hospitals (VR 460-04-8.10).

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 through June 18, 1993. DMAS held four public hearings in different statewide locations and received numerous comments from individuals and organizations. These initial proposed regulations were substantially similar to the preceding emergency regulations. Commenters on those emergency regulations expressed a belief that they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the department's research demonstrated that there had not been discharges from nursing facilities based on those emergency regulations, it was clear that the department's intent to clarify medical/nursing management had not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to § 9-6.14:1 et seq. of the Administrative Process Act (APA), DMAS was required to promulgate a second set of emergency regulations. DMAS is now reinitiating the Article 2 process (§ 9-6.14:7.1) to conform to the new APA promulgation requirements.

Due to the significant comments DMAS received on the prior proposed regulations, the second set of

emergency regulations contained revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home- and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future except for the provision of community-based services. In the currently effective emergency regulations, DMAS established the criteria which define when an individual can be determined to be at risk of nursing facility placement in the near future as "prenursing facility criteria." These proposed regulations mirror the current emergency regulations on which the agency has received no comments.

The Omnibus Budget Reconciliation Act (OBRA) of 1987 required that states specify a resident assessment instrument by which all nursing facility residents were to be assessed. The Commonwealth proposed that the preadmission screening assessment instrument be that instrument for Virginia but the Health Care Financing Administration (HCFA) did not approve its use. Therefore, effective March 27, 1991, Virginia implemented HCFA's Resident Assessment Instrument (RAI) as the official state instrument. The Minimum Data Set (MDS) is a component of the RAI. The MDS achieves the federally mandated purpose of resident assessment for the purpose of care planning. In addition, to reduce paperwork demands of nursing facility providers, DMAS has also adopted its use for continued stay evaluations to replace the preadmission screening instrument.

Nursing home preadmission screening committees will still use a separate assessment instrument for preadmission screening, the purpose of which is to determine appropriate medical care needs and proper placement in the continuum of care between community services and institutionalization.

Rehabilitation Services

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows:

Attachment 3.1 A & B, Supplement 1. The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are noncovered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2, Outpatient hospital services and § 5, Physicians services).

The Program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

Attachment 3.1 C. The modification to outpatient rehabilitative services is also reflected in this attachment. DMAS will periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. This is changed from the requirement that assessments be conducted annually. The change to recognize the provision of psychological services by supervised licensed clinical social workers is also reflected in this Plan section.

VR 460-04-3.1300. The reference to the Rehabilitation Treatment Authorization form (DMAS-125) is deleted for outpatient rehabilitative services.

Supervision of Licensed Clinical Social Workers

VR 460-04-8.10 (Long-stay Acute Care Hospital Regulations). The same policy of providing for social workers' supervision by licensed clinical psychologists or licensed psychologists clinical is provided for in these state-only regulations.

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. Repealed.

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 performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of

inpatient stays.

2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

§ 2. Outpatient hospital and rural health clinic services.

2a. Outpatient hospital services.

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

3. Are furnished by an institution that:

a. Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and

b. Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

B. 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.

C. 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.

A. 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.

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 the 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 and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

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.

B. Family planning services shall be defined as those services which delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

§ 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 ~~and~~ , psychologists clinical licensed by the Board of Psychology , *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* .

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 and psychologists clinical licensed by the Board of Psychology are covered.

I. Repealed.

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. Optometrists' services.

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 and psychologists clinical licensed by the Board of Psychology. 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 and psychologists clinical licensed by the Board of Psychology 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 annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

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 annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are 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, respiratory equipment and oxygen, and ostomy supplies, as 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.).

4. For coverage of blood glucose meters for pregnant women, refer to Supplement 3 to Attachments 3.1 A and B.

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 annually *without authorization* . Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

§ 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.

Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified

by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, 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 or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

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 or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, *school divisions,* or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~A recipient may receive a maximum of 48 visits annually without authorization.~~ The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. ~~This request must be signed and dated by a physician.~~ *Documentation for medical justification must include physician orders or a plan of care signed and dated by a physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include a copy of the physician's orders and plan of care;

5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify

who provided care (include full name and title);

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school divisions) 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; and

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 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.

A. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

B. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

C. Legend drugs are covered, with the exception of anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

D. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products 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.

E. New drugs shall be covered in accordance with the Social Security Act § 1927(d) (OBRA 90 § 4401).

F. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

G. Drug prior authorization.

1. Definitions.

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the

context otherwise dictates or the Board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.)

2. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

a. A quorum for action by the committee shall consist of six members.

b. The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

c. The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

d. The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

3. Duties of the committee.

a. The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prior authorization requirements. The board may accept or reject the recommendations in whole or in part, and may amend or add to the recommendations, except that the board may not add to the recommendation of drugs and categories of drugs to be subject to prior authorization.

b. In formulating its recommendations to the board, the committee shall not be deemed to be formulating regulations for the purposes of the Administrative Process Act (§ 9-6.14:1 et seq.). The committee shall, however, conduct public hearings prior to making recommendations to the board. The committee shall give 30 days written notice by mail of the time and place of its hearings and meetings to any manufacturer whose product is being reviewed by the committee and to those manufacturers who request of the committee in writing that they be informed of such hearings and meetings. These persons shall be afforded a reasonable opportunity to be heard and present information. The committee shall give 30 days notice of such public hearings to the public by publishing its intention to conduct hearings and meetings in the Calendar of Events of The Virginia Register of Regulations and a newspaper of general circulation located in Richmond.

c. In acting on the recommendations of the committee, the board shall conduct further proceedings under the Administrative Process Act.

4. Prior authorization of prescription drug products, coverage.

a. The committee shall review prescription drug products to recommend prior authorization under the state plan. This review may be initiated by the director, the committee itself, or by written request of the board. The committee shall complete its recommendations to the board within no more than six months from receipt of any such request.

b. Coverage for any drug requiring prior authorization shall not be approved unless a prescribing physician obtains prior approval of the use in accordance with regulations promulgated by the board and procedures established by the department.

c. In formulating its recommendations to the board, the committee shall consider the potential impact on patient care and the potential fiscal impact of prior authorization on pharmacy, physician, hospitalization and outpatient costs. Any proposed regulation making a drug or category of drugs subject to prior authorization shall be accompanied by a statement of the estimated impact of this action on pharmacy, physician, hospitalization and outpatient costs.

d. The committee shall not review any drug for which it has recommended or the board has required prior authorization within the previous 12 months, unless new or previously unavailable relevant and objective information is presented.

e. Confidential proprietary information identified as such by a manufacturer or supplier in writing in advance and furnished to the committee or the board according to this subsection shall not be subject to the disclosure requirements of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The board shall establish by regulation the means by which such confidential proprietary information shall be protected.

5. Immunity. The members of the committee and the board and the staff of the department shall be immune, individually and jointly, from civil liability for any act, decision, or omission done or made in performance of their duties pursuant to this subsection while serving as a member of such board, committee, or staff provided that such act, decision, or omission

is not done or made in bad faith or with malicious intent.

6. Annual report to joint commission. The committee shall report annually to the Joint Commission on Health Care regarding its recommendations for prior authorization of drug products.

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.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 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 physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

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.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

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

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

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 (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

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 (e.g., problem solving, anger management, community responsibility, increased impulse control and appropriate peer relations, etc.), and individual, group and family counseling.

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.

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 education within a supportive and normalizing program structure and environment.

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 or the family unit or both, 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, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

2. 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 shall 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;

(2) Eating and toilet training skills;

(3) Task learning skills;

(4) Community resource utilization skills (e.g., training in time, telephone, basic computations with money, warning sign recognition, and personal identifications, etc.);

(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property and in wearing proper clothing for the weather, etc.);

(6) Medication management;

(7) Travel and related training to and from the training sites and service and support activities;

(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

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 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.

§ 14. Services for individuals age 65 or older in institutions for mental diseases.

14a. Inpatient hospital services.

Provided, no limitations.

14b. Skilled nursing facility services.

Provided, no limitations.

14c. Intermediate care facility.

Provided, no limitations.

§ 15. Intermediate care services and intermediate care services for institutions for mental disease and mental retardation.

15a. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined, in accordance with § 1902 (a)(31)(A) of the Act, to be in need of such care.

Provided, no limitations.

15b. Including such services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions.

Provided, no limitations.

§ 16. Inpatient psychiatric facility services for individuals under 22 years of age.

Not provided.

§ 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

§ 18. Hospice care (in accordance with § 1905 (o) of the Act).

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 eight 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 five 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall 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 shall be a licensed doctor of medicine or osteopathy.

d. Counseling services. Counseling services shall 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.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

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.

§ 22. Emergency Services for Aliens.

A. 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.

B. 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.

C. 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.

D. Claims for conditions which do not meet emergency criteria for treatment in an emergency room or for acute care hospital admissions for intensity of service or severity of illness will be denied reimbursement by the Department of Medical Assistance Services.

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality 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. General acute care 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, five days 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. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements.

2. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. The Department of Medical Assistance Services shall conduct at least annually a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3.1-C, Part 1 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3.1-C, Part 2 (Adult Specialized Care Criteria) or Part 3 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

8. Specialized care services.

a. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

(1) Physician visits at least once weekly;

(2) Skilled nursing services by a registered nurse available 24 hours a day;

(3) Coordinated multidisciplinary team approach to meet the needs of the resident;

(4) For residents under age 21, provision for the educational and habilitative needs of the child;

(5) For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of six sessions each day, 15 minutes per session, five days per week;

(6) For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of four sessions per day, 30 minutes per session, five days a week;

(7) Ancillary services related to a plan of care;

(8) Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);

(9) Psychology services by a board-certified psychologist *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* related to a plan of care;

(10) Necessary durable medical equipment and supplies as required by the plan of care;

(11) Nutritional elements as required;

(12) A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) Nonemergency transportation;

(14) Discharge planning;

(15) Family or caregiver training; and

(16) Infection control.

D. *Intermediate Care* Facilities for the Mentally Retarded ~~(FMR)~~ *(ICF/MR)* and Institutions for Mental Disease (IMD).

1. With respect to each Medicaid-eligible resident in an ~~FMR~~ *ICF/MR* or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. With respect to each intermediate care FMR or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3.1-C and the facility must provide active treatment for mental retardation.

4. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

a. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the facility, before the Medicaid agency authorizes payment; and

b. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. When a resident no longer meets criteria for facilities for the mentally retarded or an institution

for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

E. Psychiatric services 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, 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 screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) 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:

"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.

"CFR" means the Code of Federal Regulations.

"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.

"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 hospital 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. 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 hospital, for psychiatric services resulting from an EPSDT screening, 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 admission to a psychiatric hospital 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 psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. 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 licensed 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 62 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 62 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~~ *Speech-Language* 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-Language 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. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

G. 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).

H. In the broad category of Special Services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

* * *

PART I.
INTENSIVE PHYSICAL 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 improve his ability to function as independently as possible; and

B. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

§ 1.2. In addition to the initial disability requirement, participants 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 intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the Department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the Department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

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 reimbursement will be provided.

PART IV.
INPATIENT REHABILITATION EVALUATION.

§ 4.1. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive 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.

§ 5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursment shall be provided.

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.

Physical therapy services 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 designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;

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 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.

Occupational therapy services 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 designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;

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 services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. Speech-language therapy.

Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

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 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.

Cognitive rehabilitation services 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 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;

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 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;

3. 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;

4. 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;

5. The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. 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.

Psychology services 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 ordered by a physician;

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 qualified psychologist as required by state law *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* ;

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 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.

Social work services 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 ordered by a physician;

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 qualified social worker as required by state law;

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 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.

Recreational therapy 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 ordered by a physician;

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 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;

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 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. Medically necessary medical supplies, equipment and appliances shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase. Payment shall not be made for additional equipment or supplies unless the extended provision of services has been authorized by DMAS. All durable medical equipment is subject to justification of need. Durable medical equipment normally supplied by the hospital for inpatient care is not covered by this provision.

2. Supplies, equipment, or appliances that are not covered for recipients of intensive physical rehabilitative services 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 appliance 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, for example, an electric wheelchair plus a manual chair; cleansing wipes);

e. 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 non-legend drugs);

f. Home or vehicle modifications;

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

h. Equipment that the primary function is vocationally or educationally related (i.e., but not limited to, computers, environmental control devices, speech devices) environmental control devices, speech devices).

PART IX.
HOSPICE SERVICES.

§ 9.1. Admission criteria.

To be eligible for hospice coverage under Medicare or Medicaid, the 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.

PART X.
COMMUNITY MENTAL HEALTH SERVICES.

§ 10.1. Utilization review general requirements.

A. 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; and

4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§ 10.2. 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.

A. Intensive in-home services for children and adolescents.

1. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

2. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. 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.

4. 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.

5. 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.

6. 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.

7. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service 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 five-hour a week minimum 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 or nonhome based services.

9. 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.

10. Emergency assistance shall be available 24 hours per day, seven days a week.

B. Therapeutic day treatment for children and adolescents.

1. 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:

a. Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. 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:

(1) This programming during the school day; or

(2) This programming to supplement the school day or school year.

c. Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. 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.

e. 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.

2. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school 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 reimbursable 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.

5. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. 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 which shall be fully completed within 30 days of initiation of the service.

C. 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, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2. The program shall 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 reimbursable 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.

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state 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 services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term 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.

1. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

3. The program shall 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 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 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.

4. 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.

E. 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.

1. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact are 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 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/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

F. Case management.

1. 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, significant others, service providers, 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.

2. 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.

3. There shall be no maximum service limits for case management services.

4. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review.

When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. The ISP shall be updated at least annually.

§ 10.3. 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.

A. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

1. The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.

2. The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

a. Managing personal care needs,

b. Understanding verbal commands and communicating needs and wants,

c. Earning wages without intensive, frequent and ongoing supervision or support,

d. Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

e. 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,

f. Making decisions which require informed consent,

g. Caring for other needs without the assistance or personnel trained to teach functional skills,

h. Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

3. Services for the individual shall be preauthorized annually by DMHMRSAS.

4. Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

5. The provider shall update the plan of care at least annually.

6. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

7. The program shall 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 reimbursable 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.

8. The provider shall be licensed by DMHMRSAS.

B. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

1. 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 shall be obtained from DMHMRSAS Care Coordination Unit annually.

2. 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.

3. 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.

a. The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the

date of the actual review.

b. The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

4. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

PART XI.
GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.

§ 11.1. Scope.

A. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

§ 11.2. Covered outpatient rehabilitative services.

Covered outpatient rehabilitative services shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service.

§ 11.3. Eligibility criteria for outpatient rehabilitative services.

To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.

§ 11.4. Criteria for the provision of outpatient rehabilitative services.

All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

A. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

B. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, 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 or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

C. Speech-language pathology services shall be those

services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440 110(c);

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 or under the direction of a speech-language pathologist who meets the qualifications in subdivision B1 above. The program must meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 11.5. Authorization for services.

A. ~~General physical rehabilitative~~ *Physical therapy, occupational therapy, and speech-language pathology* services provided in outpatient settings of acute and rehabilitation hospitals , ~~and by~~ rehabilitation agencies , *home health service agencies, or school divisions* shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period~~ *annually* . ~~A recipient may receive a maximum of 48 visits annually without authorization.~~ The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician.~~ *Documentation for medical justification must include physician orders or a plan of care signed by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 11.6. Documentation requirements.

A. Documentation of general outpatient rehabilitative services provided by a hospital-based outpatient setting , *home health agency, school division,* or a rehabilitation agency shall, at a minimum:

1. describe the clinical signs and symptoms of the patient's condition;

2. include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. include a copy of the physician's orders and plan of care;

5. include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. describe changes in each patient's condition and response to the rehabilitative treatment plan; and

7. describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 11.7. Service limitations.

The following general conditions shall apply to reimbursable physical rehabilitative services:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used,

identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-03-3.1301. Nursing Facility and MR Criteria.

~~§ 1. Nursing facility criteria introduction.~~

~~A. Traditionally, the model for nursing facility care has been facility or institutionally based; however, it is important to recognize that nursing facility care services can be delivered outside a nursing home. Nursing facility care is the provision of services regardless of the specific setting. It is the care rather than the setting in which it is rendered that is significant. The criteria for assessing nursing facility care are divided into two areas: (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living) and (ii) nursing needs.~~

~~B. The preadmission screening process marks the beginning of a continuum of long-term care services available to an individual under the Virginia Medical Assistance Program. Nursing facility care services are covered by the program for individuals whose needs meet the criteria established by program regulations.~~

~~C. Nursing facilities must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. The Department of Medical Assistance Services shall conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided.~~

~~D. The criteria for nursing facility care under the Virginia Medical Assistance Program are contained herein. An individual's need for care must meet this criteria before any authorization for payment by Medicaid will be made for either institutional or noninstitutional long-term care services. Reimbursement to nursing facilities for residents requiring specialized care shall only be made on a contractual basis.~~

~~§ 2. Criteria for nursing facility care.~~

~~A. Nursing facility care shall be the provision of services for persons whose health needs require medical and nursing supervision or care. These services may be provided in various settings, institutional and noninstitutional. Both the functional capacity of the individual and his nursing needs must be considered in determining the appropriateness of care.~~

~~B. Individuals may be considered appropriate for nursing facility care when one of the following describes their functional capacity:~~

~~1. Rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Medication Administration (Item 10).~~

~~2. Rated dependent in two to four of the Activities of Daily Living (Items 1-7), and also rated semi-dependent or dependent in Behavior Pattern and Orientation (Item 8), and semi-dependent in Joint Motion (Item 11).~~

~~3. Rated dependent in five to seven of the Activities of Daily Living (Items 1-7), and also rated dependent in Mobility (Item 9).~~

~~4. Rated semi-dependent in two to seven of the Activities of Daily Living (Items 1-7) and also rated dependent in Mobility (Item 9), and Behavior Pattern and Orientation (Item 8). An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse.~~

~~C. Placement in a noninstitutional setting should be considered before nursing home placement is sought.~~

~~§ 3. Functional status.~~

~~The following abbreviations shall mean:~~

~~I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.~~

~~A. Bathing~~

~~1. Without help (I)~~

~~2. MH only (d)~~

~~3. HH only (D)~~

~~4. MH and HH (D)~~

~~5. Is bathed (D)~~

~~B. Dressing~~

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Is dressed (D)

6. Is not dressed (D)

C. Toileting

1. Without help day and night (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Does not use toilet room (D)

D. Transferring

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Is transferred (D)

6. Is not transferred (D)

E. Bowel Function

1. Continent (I)

2. Incontinent less than weekly (d)

3. Ostomy - self care (d)

4. Incontinent weekly or more (D)

5. Ostomy - not self care (D)

F. Bladder Function

1. Continent (I)

2. Incontinent less than weekly (d)

3. External device - self care (d)

4. Indwelling catheter - self care (d)

5. Ostomy - self care (d)

6. Incontinent weekly or more (D)

7. External device - not self care (D)

8. Indwelling catheter - not self care (D)

9. Ostomy - not self care (D)

G. Eating/Feeding

1. Without help (I)

2. MH only (d)

3. HH only (D)

4. MH and HH (D)

5. Spoon fed (D)

6. Syringe or tube fed (D)

7. Fed by IV or elysis (D)

H. Behavior Pattern and Orientation

1. Appropriate or Wandering/ Passive less than weekly + Oriented (I)

2. Appropriate or Wandering/ Passive less than weekly + Disoriented - Some Spheres (I)

3. Wandering/Passive Weekly or More + Oriented (I)

4. Appropriate or Wandering/ Passive less than weekly + Disoriented - All Spheres (d)

5. Wandering/Passive Weekly or more + Disoriented - Some or All Spheres (d)

6. Abusive/Aggressive/ Disruptive less than weekly + Oriented or Disoriented (d)

7. Abusive/Aggressive/ Disruptive weekly or more + Oriented (d)

8. Abusive/Aggressive/ Disruptive weekly or more + Disoriented (D)

9. Mobility

a. Goes outside without help (I)

b. Goes outside MH only (d)

c. Goes outside HH only (D)

d. Goes outside MH and HH (D)

e. Confined - moves about (D)

f. Confined - does not move about (D)

10. Medication Administration

a. No medications (I)

b. Self administered - monitored less than weekly (I)

c. By lay persons, monitored less than weekly (I)

d. By Licensed/Professional nurse and/or monitored weekly or more (D)

e. Some or all by Professional nurse (D)

11. Joint Motion

a. Within normal limits (I)

b. Limited motion (d)

c. Instability - corrected (I)

d. Instability - uncorrected (D)

e. Immobility (D)

§ 4. Nursing needs.

A. Following are examples of services provided or supervised by licensed nursing and professional personnel; however, no single service necessarily indicates a need for nursing facility care:

1. Application of aseptic dressings;

2. Routine catheter care;

3. Inhalation therapy after the regimen has been established;

4. Supervision for adequate nutrition and hydration for patients who, due to physical or mental impairments, are subject to malnourishment or dehydration;

5. Routine care in connection with plaster casts, braces, or similar devices;

6. Physical, occupational, speech, or other therapy;

7. Therapies, exercise and positioning to maintain or strengthen muscle tone, to prevent contractures, decubiti, and deterioration;

8. Routine care of colostomy or ileostomy;

9. Use of restraints including bedrails, soft binders, and wheelchair supports;

10. Routine skin care to prevent decubiti;

11. Care of small uncomplicated decubiti, and local skin rashes; or

12. Observation of those with sensory, metabolic, and circulatory impairment for potential medical complications.

B. Services requiring more intensive nursing care, such as wounds or lesions requiring daily care, nutritional deficiencies leading to specialized feeding, and paralysis or paresis benefitting from rehabilitation, shall be reimbursed at a higher rate.

C. The final determination for nursing facility care shall be based on the individual's need for medical and nursing management. Nursing facility care criteria are intended only as guidelines. Professional judgment must always be used to assure appropriateness of care.

§ 5. Specific services which do not meet the criteria for nursing facility care.

A. Care needs that do not meet the criteria for nursing facility care include, but are not limited to, the following:

1. Minimal assistance with activities of daily living;

2. Independent use of mechanical devices such as a wheelchair, walker, crutch, or cane;

3. Limited diets such as mechanically altered, low salt, low residue, diabetic, reducing, and other restrictive diets;

4. Medications that can be independently self-administered or administered by the individual with minimal supervision;

5. The protection of the patient to prevent him form obtaining alcohol or drugs, or from confronting an unpleasant situation; or

6. Minimal observation or assistance by staff for confusion, memory impairment, or poor judgment.

B. Special attention shall be given to individuals who receive psychiatric treatment. These individuals must also have care needs that meet the criteria for nursing facility care.

§ 6. Summary.

In patient placement, all available resources must be explored, i.e., the immediate family, other relatives, home health services, and other community resources. When applying the criteria, primary consideration is to be given

to the utilization of available community/family resources.

§ 7. Adult specialized care criteria.

A. General description.

The resident must have long-term health conditions requiring close medical supervision, 24 hours licensed nursing care, and specialized services or equipment.

B. Targeted population.

1. Individuals requiring mechanical ventilation;

2. Individuals with communicable diseases requiring universal or respiratory precautions;

3. Individuals requiring ongoing intravenous medication or nutrition administration; or

4. Individuals requiring comprehensive rehabilitative therapy services.

C. Criteria.

1. The individual must require at a minimum:

a. Physician visits at least once weekly;

b. Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the resident resides, 24 hours a day, whose sole responsibility is the designated unit); and

c. Coordinated multidisciplinary team approach to meet needs.

2. In addition, the individual must meet one of the following requirements:

a. Must require two out of three of the following rehabilitative services: Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of four therapy sessions (minimum of 30 minutes per session) per day, five days per week; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. 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; or

c. Individuals that require at least one of the following special services:

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

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

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

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

(5) 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);

(6) 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.).

§ 8. Pediatric/adolescent specialized care criteria.

A. General description.

The child must have ongoing health conditions requiring close medical supervision, 24 hours licensed nursing supervision, and specialized services or equipment. The recipient must be age 21 or under.

B. Targeted population.

1. Children requiring mechanical ventilation;

2. Children with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.);

3. Children requiring ongoing intravenous medication or nutrition administration;

4. Children requiring daily dependence on device based respiratory or nutritional support (tracheostomy, gastrostomy, etc.);

5. Children requiring comprehensive rehabilitative therapy services;

6. Children with terminal illness.

B. Criteria.

1. The child must require at a minimum:

a. Physician visits at least once weekly;

b. Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on

which the child is residing, 24 hours a day, whose sole responsibility is that nursing unit);

c. Coordinated multidisciplinary team approach to meet needs;

d. The nursing facility must provide for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. The services must be provided for a total of two hours per day, minimum.

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

a. Must require two out of three of the following physical rehabilitative services: Physical therapy, Occupational therapy, Speech pathology services; therapy must be provided at a minimum of six therapy sessions (minimum of 15 minutes per session) per day, five days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis; or

b. 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

c. Children that require at least one of the following special services:

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

(2) Special infection control precautions (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.);

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

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

(5) 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);

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

(7) Care for terminal illness.

§ 9. Criteria for care in facilities for mentally retarded persons.

A. Definitions.

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

"No assistance" means no help is needed.

"Prompting/structuring" means prior to the functioning, some verbal direction or some rearrangement of the environment is needed.

"Supervision" means that a helper must be present during the function and provide only verbal direction, gestural prompts, or guidance.

"Some direct assistance" means that a helper must be present and provide some physical guidance/support (with or without verbal direction).

"Total care" means that a helper must perform all or nearly all of the functions.

"Rarely" means that a behavior occurs quarterly or less.

"Sometimes" means that a behavior occurs once a month or less.

"Often" means that a behavior occurs two to three times a month.

"Regularly" means that a behavior occurs weekly or more.

B. Utilization control regulations require that criteria be formulated for guidance for appropriate levels of services. Traditionally, care for the mentally retarded has been institutionally based; however, this level of care need not be confined to a specific setting. The habilitative and health needs of the client are the determining issues.

C. The purpose of these regulations is to establish standard criteria to measure eligibility for Medicaid payment. Medicaid can pay for care only when the client is receiving appropriate services and when "active treatment" is being provided. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or waivered rehabilitative services for the mentally retarded.

D. Care in facilities for the mentally retarded requires planned programs for habilitative needs or health related services which exceed the level of room, board, and supervision of daily activities.

Such care shall be a combination of habilitative, rehabilitative, and health services directed toward increasing the functional capacity of the retarded person. Examples of services shall include training in the activities of daily living, task-learning skills, socially acceptable behaviors, basic community living programming, or health care and health maintenance. The overall objective of programming shall be the attainment of the optimal physical, intellectual, social, or task learning level which the person can presently or potentially achieve.

E. The evaluation and re-evaluation for care in a facility for the mentally retarded shall be based on the needs of the person, the reasonable expectations of the resident's capabilities, the appropriateness of programming, and whether progress is demonstrated from the training and, in an institution, whether the services could reasonably be provided in a less restrictive environment.

§ 10. Patient assessment criteria.

A. The patient assessment criteria are divided into broad categories of needs, or services provided. These must be evaluated in detail to determine the abilities/skills which will be the basis for the development of a plan of care. The evaluation process will demonstrate a need for programming an array of skills and abilities or health care services. These have been organized into seven major categories. Level of functioning in each category is graded from the most dependent to the least dependent. In some categories, the dependency status is rated by the degree of assistance required. In other categories, the dependency is established by the frequency of a behavior or ability to perform a given task.

B. The resident must meet the indicated dependency level in two or more of categories 1 through 7.

1. Health Status - To meet this category:

a. Two or more questions must be answered with a 4, or

b. Question "j" must be answered "yes."

2. Communication Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

3. Task Learning Skills - To meet this category:

Three or more questions must be answered with a 3 or a 4.

4. Personal Care - To meet this category:

a. Question "a" must be answered with a 4 or a 5, or

b. Question "b" must be answered with a 4 or a 5, or

c. Questions "c" and "d" must be answered with a 4 or a 5.

5. Mobility - To meet this category:

Any one question must be answered with a 4 or a 5.

6. Behavior - To meet this category:

Any one question must be answered with a 3 or a 4.

7. Community Living - To meet this category:

a. Any two of the questions "b," "c," or "g" must be answered with a 4 or a 5, or

b. Three or more questions must be answered with a 4 or a 5.

LEVEL OF FUNCTIONING SURVEY

1. Health status.

How often is nursing care or nursing supervision by a licensed nurse required for the following? (Key: 1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)

a. Medication administration and/or evaluation for effectiveness of a medication regimen? 1...2...3...4

b. Direct services: i.e. care for lesions, dressings, treatments (other than shampoos, foot powder, etc.) 1...2...3...4

c. Seizures control 1...2...3...4

d. Teaching diagnosed disease control and care, including diabetes 1...2...3...4

e. Management of care of diagnosed circulatory or respiratory problems 1...2...3...4

f. Motor disabilities which interfere with all activities of Daily Living - Bathing, Dressing, Mobility, Toileting, etc. 1...2...3...4

g. Observation for choking/aspiration while eating, drinking? 1...2...3...4

h. Supervision of use of adaptive equipment, i.e., special spoon, braces, etc. 1...2...3...4

i. Observation for nutritional problems (i.e.,

undernourishment, swallowing difficulties, obesity) 1...2...3...4

j. Is age 55 or older, has a diagnosis of a chronic disease and has been in an institution 20 years or more 1...2...3...4

2. Communication.

Using the key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person

a. Indicate wants by pointing, vocal noises, or signs? 1...2...3...4

b. Use simple words, phrases, short sentences? 1...2...3...4

c. Ask for at least ten things using appropriate names? 1...2...3...4

d. Understand simple words, phrases or instructions containing prepositions: i.e., "on" "in" "behind"? 1...2...3...4

e. Speak in an easily understood manner? 1...2...3...4

f. Identify self, place of residence, and significant others? 1...2...3...4

3. Task learning skills.

How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)

a. Pay attention to purposeful activities for 5 minutes? 1...2...3...4

b. Stay with a 3 step task for more than 15 minutes? 1...2...3...4

c. Tell time to the hour and understand time intervals? 1...2...3...4

d. Count more than 10 objects? 1...2...3...4

e. Do simple addition, subtraction? 1...2...3...4

f. Write or print ten words? 1...2...3...4

g. Discriminate shapes, sizes, or colors? 1...2...3...4

h. Name people or objects when describing pictures? 1...2...3...4

i. Discriminate between "one," "many," "lot"? 1...2...3...4

4. Personal/self care.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.? 1...2...3...4...5

b. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.? 1...2...3...4...5

c. Perform bathing function (i.e., bathe, runs bath, dry self, etc.)? 1...2...3...4...5

5. Mobility.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. Move (walking, wheeling) around environment? 1...2...3...4...5

b. Rise from lying down to sitting positions, sits without support? 1...2...3...4...5

c. Turn and position in bed, roll over? 1...2...3...4...5

6. Behavior.

How often does this person (Key: 1=Rarely, 2=Sometimes, 3=Often, 4=Regularly)

a. Engage in self destructive behavior? 1...2...3...4

b. Threaten or do physical violence to others? 1...2...3...4

c. Throw things, damage property, have temper outbursts? 1...2...3...4

d. Respond to others in a socially unacceptable manner - (without undue anger, frustration or hostility) 1...2...3...4

7. Community living skills.

With what type of assistance would this person currently be able to (Key: 1=No Assistance, 2=Prompting/Structuring, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

a. Prepare simple foods requiring no mixing or cooking? 1...2...3...4...5

b. Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)? 1...2...3...4...5

c. Add coins of various denominations up to one dollar? 1...2...3...4...5

~~d. Use the telephone to call home, doctor, fire, police? 1...2...3...4...5~~

~~e. Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.? 1...2...3...4...5~~

~~f. Refrain from exhibiting unacceptable sexual behavior in public? 1...2...3...4...5~~

~~g. Go around cottage, ward, building, without running away, wandering off, or becoming lost? 1...2...3...4...5~~

~~h. Make minor purchases i.e., candy, soft drink, etc.? 1...2...3...4...5~~

PART I.
NURSING FACILITY CRITERIA.

§ 1.1. Introduction.

A. Medicaid-funded long-term care services may be provided in either a nursing facility or community-based care setting. The criteria for assessing an individual's eligibility for Medicaid payment of nursing facility care consist of two components: (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living) and (ii) medical or nursing needs. The criteria for assessing an individual's eligibility for Medicaid payment of community-based care consist of three components: (i) functional capacity (the degree of assistance an individual requires to complete activities of daily living); (ii) medical or nursing needs; and (iii) the individual's risk of nursing facility placement in the absence of community-based waiver services.

1. In order to qualify for Medicaid payment for nursing facility care an individual must meet both functional capacity requirements and have a medical condition which requires ongoing medical or nursing management. An exception may be made when the individual does not meet the functional capacity requirement but the individual does have a health condition that requires the daily direct services of a licensed nurse that cannot be managed on an outpatient basis.

2. In order to qualify for Medicaid payment for community-based care an individual must either meet both the functional and medical components of the nursing facility criteria or meet the prenursing facility criteria defined in § 2.3. In addition, the individual must be determined to be at risk of nursing facility placement unless services under the waiver are offered.

B. The preadmission screening process preauthorizes a continuum of long-term care services available to an individual under the Virginia Medical Assistance Program. Nursing facilities' preadmission screenings to authorize Medicaid-funded long-term care are performed by teams composed by agencies contracting with the Department of Medical Assistance Services (DMAS). The authorization for Medicaid-funded long-term care may be rescinded by the nursing facility or community-based care provider or by DMAS at any point that the individual is determined to no longer meet the criteria for Medicaid-funded long-term care. Medicaid-funded long-term care services are covered by the program for individuals whose needs meet the criteria established by program regulations. Authorization of appropriate noninstitutional services shall be evaluated before actual nursing facility placement is considered.

C. Prior to an individual's admission, the nursing facility must review the completed preadmission screening forms to ensure that appropriate nursing facility admission criteria have been documented. The nursing facility is also responsible for documenting, upon admission and on an ongoing basis, that the individual meets and continues to meet nursing facility criteria. For this purpose, the nursing facility will use the Minimum Data Set (MDS). The post admission assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. If at any time during the course of the resident's stay, it is determined that the resident does not meet nursing facility criteria as defined in the State Plan for Medical Assistance, the nursing facility must initiate discharge of such resident. Nursing facilities must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity and medical and nursing needs.

The Department of Medical Assistance Services shall conduct surveys of the assessments completed by nursing facilities to determine that services provided to the residents meet nursing facility criteria and that needed services are provided.

D. The community-based provider is responsible for documenting upon admission and on an ongoing basis that the individual meets the criteria for Medicaid-funded long-term care.

E. The criteria for nursing facility care under the Virginia Medical Assistance Program are contained herein. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or noninstitutional long-term care services. The Nursing Home Preadmission Screening team is responsible for documenting on the state-designated assessment instrument that the individual meets the criteria for nursing facility or community-based waiver services and for authorizing admission to Medicaid funded long-term care. The rating of functional dependencies on the assessment instrument must be based on the individual's ability to function in a community environment, not including any institutionally induced dependence.

§ 1.2. Preadmission screening criteria for nursing facility care.

A. Functional dependency alone is not sufficient to demonstrate the need for nursing facility care or placement.

B. Except as provided for in § 1.1 A, an individual may only be considered to meet the nursing facility criteria when both the functional capacity of the individual and his medical or nursing needs meet the following requirements. Even when an individual meets nursing facility criteria, placement in a noninstitutional setting shall be evaluated before actual nursing facility placement is considered.

1. Functional capacity.

a. When documented on a completed state-designated preadmission screening assessment instrument which is completed in a manner consistent with the definitions of activities of daily living and directions provided by DMAS for the rating of those activities, individuals may be considered to meet the functional capacity requirements for nursing facility care when one of the following describes their functional capacity:

(1) Rated dependent in two to four of the Activities of Daily Living, and also rated semi-dependent or dependent in Behavior Pattern and Orientation, and semi-dependent in Joint Motion or semi-dependent in Medication Administration.

(2) Rated dependent in five to seven of the Activities of Daily Living, and also rated dependent in Mobility.

(3) Rated semi-dependent in two to seven of the Activities of Daily Living, and also rated dependent in Mobility and Behavior Pattern and Orientation.

b. The rating of functional dependencies on the preadmission screening assessment instrument must be based on the individual's ability to function in a community environment, not including any institutionally induced dependence. The following abbreviations shall mean: I = independent; d = semi-dependent; D = dependent; MH = mechanical help; HH = human help.

(1) Bathing

(a) Without help (I)

(b) MH only (d)

(c) HH only (D)

(d) MH and HH (D)

(e) Is bathed (D)

(2) Dressing

(a) Without help (I)

(b) MH only (d)

(c) HH only (D)

(d) MH and HH (D)

(e) Is dressed (D)

(f) Is not dressed (D)

(3) Toileting

(a) Without help day or night (I)

(b) MH only (d)

(c) HH only (D)

(d) MH and HH (D)

(e) Does not use toilet room (D)

(4) Transferring

(a) Without help (I)

(b) MH only (d)

(c) HH only (D)

(d) MH and HH (D)

(e) Is transferred (D)

(f) Is not transferred (D)

(5) Bowel Function

(a) Continent (I)

(b) Incontinent less than weekly (d)

(c) Ostomy - self-care (d)

(d) Incontinent weekly or more (D)

(e) Ostomy - not self-care (D)

(6) Bladder Function

(a) Continent (I)

(b) Incontinent less than weekly (d)

(c) External device - self-care (d)

(d) Indwelling catheter - self-care (d)

(e) Ostomy - self-care (d)

(f) Incontinent weekly or more (D)

(g) External device - not self-care (D)

(h) Indwelling catheter - not self-care (D)

(i) Ostomy - not self-care (D)

(7) Eating/Feeding

(a) Without help (I)

(b) MH only (d)

(c) HH only (D)

(d) MH and HH (D)

(e) Spoon fed (D)

(f) Syringe or tube fed (D)

(g) Fed by IV or clysis (D)

(8) Behavior Pattern and Orientation

(a) Appropriate or Wandering/Passive less than weekly + Oriented (I)

(b) Appropriate or Wandering/Passive less than weekly + Disoriented - Some Spheres (I)

(c) Wandering/Passive Weekly/or more + Oriented (I)

(d) Appropriate or Wandering/Passive less than weekly + Disoriented - All Spheres (d)

(e) Wandering/Passive . Weekly/Some or more + Disoriented - All Spheres (d)

(f) Abusive/Aggressive/Disruptive less than weekly + Oriented or Disoriented (d)

(g) Abusive/Aggressive/Disruptive weekly or more + Oriented (d)

(h) Abusive/Aggressive/Disruptive weekly or more + Disoriented (D)

(9) Mobility

(a) Goes outside without help (I)

(b) Goes outside MH only (d)

(c) Goes outside HH only (D)

(d) Goes outside MH and HH (D)

(e) Confined - moves about (D)

(f) Confined - does not move about (D)

(10) Medication Administration

(a) No medications (I)

(b) Self-administered - monitored less than weekly (I)

(c) By lay persons, monitored less than weekly (I)

(d) By Licensed/Professional nurse and/or monitored weekly or more (d)

(e) Some or all by Professional nurse (D)

(11) Joint Motion

(a) Within normal limits (I)

(b) Limited motion (d)

(c) Instability - corrected (I)

(d) Instability - uncorrected (D)

(e) Immobility (D)

2. An individual with medical or nursing needs is an individual whose health needs require medical or nursing supervision or care above the level which could be provided through assistance with Activities of Daily Living, Medication Administration and general supervision and is not primarily for the care and treatment of mental diseases. Medical or nursing supervision or care beyond this level is required when any one of the following describes the individual's need for medical or nursing supervision:

a. The individual's medical condition requires observation and assessment to assure evaluation of the person's need for modification of treatment or additional medical procedures to prevent destabilization and the person has demonstrated an inability to self-observe or evaluate the need to contact skilled medical professionals;

b. Due to the complexity created by the person's multiple, interrelated medical conditions, the potential for the individual's medical instability is high or medical instability exists; or

c. The individual requires at least one ongoing medical/nursing service. The following is a nonexclusive list of medical/nursing services which may, but need not necessarily, indicate a need for medical or nursing supervision or care:

(1) Application of aseptic dressings;

(2) Routine catheter care;

(3) Respiratory therapy;

(4) Supervision for adequate nutrition and hydration for individuals who show clinical evidence of malnourishment or dehydration or have recent history of weight loss or inadequate hydration which, if not supervised would be expected to result in malnourishment or dehydration;

(5) Therapeutic exercise and positioning;

(6) Routine care of colostomy or ileostomy or management of neurogenic bowel and bladder;

(7) Use of physical (e.g., side rails, poseys, locked wards) or chemical restraints;

(8) Routine skin care to prevent pressure ulcers for individuals who are immobile;

(9) Care of small uncomplicated pressure ulcers, and local skin rashes;

(10) Management of those with sensory, metabolic, or circulatory impairment with demonstrated clinical evidence of medical instability;

(11) Chemotherapy;

(12) Radiation;

(13) Dialysis;

(14) Suctioning;

(15) Tracheostomy care;

(16) Infusion Therapy;

(17) Oxygen.

3. Even when an individual meets nursing facility criteria, provision of services in a noninstitutional setting shall be considered before nursing facility placement is sought.

§ 1.3. Summary of preadmission nursing facility criteria.

A. An individual shall be determined to meet the nursing facility criteria when:

1. The individual has both limited functional capacity and requires medical or nursing management according to the requirements of § 2.1; or

2. The individual is rated dependent in some functional limitations, but does not meet the functional capacity requirements, and the individual requires the daily direct services or supervision of a licensed nurse that cannot be managed on an outpatient basis (e.g., clinic, physician visits, home health services).

B. An individual shall not be determined to meet nursing facility criteria when one of the following specific care needs solely describes his condition:

1. An individual who requires minimal assistance with activities of daily living, including those persons whose only need in all areas of functional capacity is for prompting to complete the activity;

2. An individual who independently uses mechanical devices such as a wheelchair, walker, crutch, or cane;

3. An individual who requires limited diets such as a mechanically altered, low salt, low residue, diabetic, reducing, and other restrictive diets;

4. An individual who requires medications that can be independently self-administered or administered by the caregiver;

5. An individual who requires protection to prevent him from obtaining alcohol or drugs or to address a social/environmental problem;

6. An individual who requires minimal staff observation or assistance for confusion, memory impairment, or poor judgment;

7. An individual whose primary need is for behavioral management which can be provided in a community-based setting;

§ 1.4. Evaluation to determine eligibility for Medicaid payment of nursing facility or home- and community-based care services.

A. The screening team shall not authorize Medicaid-funded nursing facility services for any individual who does not meet nursing facility criteria. Once the nursing home preadmission screening team has determined whether or not an individual meets the nursing facility criteria, the screening team must determine the most appropriate and cost-effective means of meeting the needs of the individual. The screening team must document a complete assessment of all the resources available for that individual in the community (i.e., the immediate family, other relatives, other community resources and other services in the continuum of long-term care which are less intensive than nursing facility level-of-care services). The screening team shall be responsible for preauthorizing Medicaid-funded long-term care according to the needs of each individual and the support required to meet those needs. The screening team shall authorize Medicaid-funded nursing facility care for an individual who meets the nursing facility criteria only when services in the community are either not a feasible alternative or the individual or the individual's representative rejects the screening team's plan for community services. The screening team must document that the option of

community-based alternatives has been explained, the reason community-based services were not chosen, and have this document signed by the client or client's primary caregivers.

B. The screening team shall authorize community-based waiver services only for an individual who:

1. Meets the nursing facility criteria and is at risk of nursing home placement without waiver services. Waiver services are offered to such an individual as an alternative to avoid nursing facility admission; or

2. Meets the following prenursing facility criteria and is at risk of nursing home placement without waiver services. Waiver services are offered to such an individual as a preventive service to delay or avoid nursing facility admission which would be required in the near future if community-based care is not offered. The prenursing facility criteria are:

a. The individual is rated dependent in four of the activities of daily living and also rated dependent in mobility and has a need for medical or nursing supervision, or

b. The individual meets the functional dependency component of the nursing facility criteria but lacks a medical or nursing need.

C. Federal regulations which govern Medicaid-funded home- and community-based services require that services only be offered to individuals who would otherwise require institutional placement in the absence of home- and community-based services. The determination that an individual would otherwise require placement in a nursing facility is based upon a finding that the individual's current condition and available support are insufficient to enable the individual to remain in the home and thus the individual is at risk of institutionalization if community-based care is not authorized. The determination of the individual's risk of nursing facility placement shall be documented either on the state-designated preadmission screening assessment or in a separate attachment for every individual authorized to receive community-based waiver services. To authorize community-based waiver services, the screening team must document that the individual is at risk of nursing facility placement by finding that one of the following conditions is met:

1. Application for the individual to a nursing facility has been made and accepted.

2. The individual has been cared for in the home prior to the assessment and evidence is available demonstrating a deterioration in the individual's health care condition or a change in available support preventing former care arrangements from meeting the individual's need. Examples of such evidence may be, but shall not necessarily be limited to:

a. Recent hospitalizations,

b. Attending physician documentation, or

c. Reported findings from medical or social service agencies.

3. There has been no change in condition or available support but evidence is available that demonstrates the individual's functional, medical and nursing needs are not being met. Examples of such evidence may be, but shall not necessarily be limited to:

a. Recent hospitalizations,

b. Attending physician documentation, or

c. Reported findings from medical or social service agencies.

§ 1.5. Criteria for continued nursing facility care using the Minimum Data Set (MDS).

Individuals may be considered appropriate for nursing facility care when one of the following describes their medical or nursing needs and functional capacity as recorded on the Minimum Data Set (MDS) of the Resident Assessment Instrument that is specified by the Commonwealth:

1. Functional capacity:

a. The individual meets criteria for two to four of the Activities of Daily Living, plus Behavior and Orientation, and Joint Motion;

b. The individual meets criteria for five to seven of the Activities of Daily Living and also for Locomotion; or

c. The individual meets criteria for two to seven of the Activities of Daily Living and also for Locomotion, and Behavior and Orientation. An individual in this category will not be appropriate for nursing facility care unless he also has a medical condition requiring treatment or observation by a nurse.

2. Medical or nursing needs. The individual has health needs which require medical or nursing supervision or care above the level which could be provided through assistance with activities of daily living, medication administration and general supervision and is not primarily for the care and treatment of mental diseases.

§ 1.6. Definitions to be applied when completing the MDS.

A. Activities of Daily Living (ADLs):

1. Transfer (§ E(1)(b)). In order to meet this ADL, the

individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

2. Dressing (§ E(1)(d)). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

3. Eating (§ E(1)(e)). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7-day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7 day period, or

g. To meet this ADL, one of the following is checked:

(1) § L(4)(a) Parenteral or intravenous

(2) § L(4)(b) Feeding tube

(3) § L(4)(d) Syringe (oral feeding)

4. Toilet Use (§ E(1)(f)). In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last 7 days

b. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR -

supervision plus physical assistance provided on 1 or 2 times during last 7 days

c. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

d. (3) Extensive assistance - While resident performed part of activity, over last 7 day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

e. (4) Total dependence - Full staff performance of activity during entire 7 days

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

5. Bathing (§ E(3)(a)). To meet this ADL, the individual must score a 1, 2, 3, 4, or 8 as described below:

a. (0) Independent - no help provided.

b. (1) Supervision - oversight help only

c. (2) Physical help limited to transfer only

d. (3) Physical help in part of bathing activity

e. (4) Total dependence

f. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

6. Bladder Continence (§ F(1)(b)). In order to meet this ADL, the individual must score a 2, 3, or 4 in this category:

a. (0) Continent - Complete control

b. (1) Usually continent - incontinent episodes once a week or less

c. (2) Occasionally incontinent - 2+ times a week but not daily

d. (3) Frequently incontinent - tended to be incontinent daily, but some control present (e.g., on day shift)

e. (4) Incontinent - Had inadequate control; multiple daily episodes or

f. To meet this ADL, one of the following is checked:

(1) §F(3)(b) external cathether

(2) §F(3)(c) indwelling catheter

7. Bowel Continence (§ F(1)(a)). In order to meet this ADL, the individual must score a 2, 3, or 4 in this category:

a. (0) Continent - Complete control

b. (1) Usually continent - control problems less than weekly

c. (2) Occasionally incontinent - once a week

d. (3) Frequently incontinent - 2-3 times a week

e. (4) Incontinent - Had inadequate control all (or almost all) of the time, or

f. To meet this ADL, § F(3)(h) ostomy is checked.

B. Joint Motion (§ E(4)).

In order to meet this category, at least one of the following must be checked:

1. § E(4)(c) Contracture to arms, legs, shoulders, or hands

2. (d) Hemiplegia/hemiparesis

3. (e) Quadriplegia

4. (f) Arm - partial or total loss of voluntary movement

5. (g) Hand - lack of dexterity (e.g., problem using toothbrush or adjusting hearing aid)

6. (h) Leg - partial or total loss of voluntary movement

7. (i) Leg - unsteady gait

8. (j) Trunk - partial or total loss of ability to position, balance, or turn body

C. Locomotion (§ E(1)(c)).

In order to meet this ADL, the individual must score a 1, 2, 3, 4, or 8 in this category:

1. (0) Independent - No help or oversight - OR - help/oversight provided only 1 or 2 times during last

7 days

2. (1) Supervision - Oversight, encouragement or cueing provided 3+ times during last 7 days - OR - supervision plus physical assistance provided on 1 or 2 times during last 7 days

3. (2) Limited assistance - Resident highly involved in activity; received physical help in guided maneuvering of limbs or other nonweight bearing assistance 3+ times - OR - more help provided only 1 or 2 times during last 7 days

4. (3) Extensive assistance - While resident performed part of activity, over last 7 day period, help of following type or types was provided 3 or more times: weight-bearing support or full staff performance during part (but not all) of last 7 days

5. (4) Total dependence - Full staff performance of activity during entire 7 days

6. (8) Activity did not occur during the entire 7-day period. Use of this code is limited to situations where the ADL activity was not performed and is primarily applicable to fully bed-bound residents who neither transferred from bed nor moved between locations over the entire 7-day period.

D. Nursing Observation.

In order to meet this category, at least one of the following special treatments, procedures and skin conditions must be checked:

1. § N(4)(a) Open lesions other than stasis or pressure ulcers (e.g., cuts)

(f) Wound care or treatment (e.g., pressure ulcer care, surgical wound)

(g) Other skin care or treatment

2. § P(1)(a) Chemotherapy

(b) Radiation

(c) Dialysis

(d) Suctioning

(e) Tracheostomy care

(f) Intravenous medications

(g) Transfusions

(h) Oxygen

(i) Other special treatment or procedure

E. Behavior and Orientation.

In order to meet this category, the individual must meet at least one of the categories for both behavior and orientation.

1. Behavior. To meet the criteria for behavior, the individual must meet at least one of the following:

a. § H(1)(d) Failure to eat or take medications, withdrawal from self care or leisure activities (must be checked), or

b. One of the following is coded 1 (behavior of this type occurred less than daily) or 2 (behavior of this type occurred daily or more frequently):

(1) § H(3)(a) Wandering (moved with no rational purpose, seemingly oblivious to needs or safety)

(2) § H(3)(b) Verbally abusive (others were threatened, screamed at, cursed at)

(3) § H(3)(c) Physically abusive (others were hit, shoved, scratched, sexually abused)

(4) § H(3)(d) Socially inappropriate/disruptive behavior (made disrupting sounds, noisy, screams, self abusive acts, sexual behavior or disrobing in public, smeared/threw food/feces, hoarding, rummaged through others' belongings)

2. Orientation: To meet this category, the individual must meet at least one of the following:

a. § B(3)(d) Awareness that individual is in a nursing home - is not checked;

b. § B(3)(e) None of the memory/recall ability items are recalled - must be checked; or

c. § B(4) Cognitive skills for daily decision making - must be coded with a 2 (moderately impaired - decisions poor; cues/supervision required) or 3 (severely impaired never/rarely made decisions).

PART II.
ADULT SPECIALIZED CARE CRITERIA.

§ 2.1. General description.

The resident must have long-term health conditions requiring close medical supervision, 24-hour licensed nursing care, and specialized services or equipment.

§ 2.2. Targeted population.

Targeted population includes:

1. Individuals requiring mechanical ventilation;

2. Individuals with communicable diseases requiring universal or respiratory precautions;

3. Individuals requiring ongoing intravenous medication or nutrition administration; and

4. Individuals requiring comprehensive rehabilitative therapy services.

§ 2.3. Criteria.

A. The individual must require at a minimum:

1. Physician visits at least once weekly;

2. Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the resident resides, 24 hours a day, whose sole responsibility is the designated unit); and

3. Coordinated multidisciplinary team approach to meet needs.

B. In addition, the individual must meet one of the following requirements:

1. Must require two out of three of the following rehabilitative services: physical therapy, occupational therapy, speech-pathology services; therapy must be provided at a minimum of four therapy sessions (minimum of 30 minutes per session) per day, five days per week; individual must demonstrate progress in overall rehabilitative plan of care on a monthly basis;

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; or

3. Individuals that require at least one of the following special services:

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

b. Special infection control precautions (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 skilled nurse or 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. 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).

PART III.
PEDIATRIC AND ADOLESCENT SPECIALIZED CARE CRITERIA.

§ 3.1. General description.

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

§ 3.2. Targeted population.

Targeted population includes:

1. Children requiring mechanical ventilation;

2. Children with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.);

3. Children requiring ongoing intravenous medication or nutrition administration;

4. Children requiring daily dependence on device based respiratory or nutritional support (tracheostomy, gastrostomy, etc.);

5. Children requiring comprehensive rehabilitative therapy service; and

6. Children with terminal illness.

§ 3.3. Criteria.

A. The child must require at a minimum:

1. Physician visits at least once weekly;

2. Skilled nursing services 24 hours a day (a registered nurse must be on the nursing unit on which the child is residing, 24 hours a day, whose sole responsibility is that nursing unit);

3. Coordinated multidisciplinary team approach to meet needs; and

4. The nursing facility must provided for the educational and habilitative needs of the child. These services must be age appropriate and appropriate to the cognitive level of the child. Services must also be

individualized to meet the specific needs of the child and must be provided in an organized and proactive manner. Services may include but are not limited to school, active treatment for mental retardation, habilitative therapies, social skills and leisure activities. The services must be provided for a total of two hours per day, minimum.

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

1. Must require two out of three of the following rehabilitative services: Physical Therapy, Occupational Therapy, Speech-pathology services; therapy must be provided at a minimum of six therapy sessions (minimum of 15 minutes per session) per day, five days per week; child must demonstrate progress in overall rehabilitative plan of care on a monthly basis;

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. Children that require at least one of the following special services:

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

b. Special infection control precautions (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 skilled nurse or 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; or

g. Care for terminal illness.

PART IV.
CRITERIA FOR CARE IN FACILITIES FOR MENTALLY RETARDED PERSONS.

§ 4.1. Definitions.

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

"No assistance" means no help is needed.

"Prompting/structuring" means prior to the functioning, some verbal direction or some rearrangement of the environment is needed.

"Supervision" means that a helper must be present during the function and provide only verbal direction, general prompts, and/or guidance.

"Some direct assistance" means that helper must be present and provide some physical guidance/support (with or without verbal direction).

"Total care" means that a helper must perform all or nearly all of the functions.

"Rarely" means that a behavior occurs quarterly or less.

"Sometimes" means that a behavior occurs once a month or less.

"Often" means that a behavior occurs two or three times a month.

"Regularly" means that a behavior occurs weekly or more.

§ 4.2. Utilization control.

Utilization control regulations require that criteria be formulated for guidance for appropriate levels of services. Traditionally, care for the mentally retarded has been institutionally based; however, this level of care need not be confined to a specific setting. The habilitative and health needs of the client are the determining issues.

§ 4.3. Purpose.

The purpose of these regulations is to establish standard criteria to measure eligibility for Medicaid payment. Medicaid can pay for care only when the client is receiving appropriate services and when "active treatment" is being provided. An individual's need for care must meet these criteria before any authorization for payment by Medicaid will be made for either institutional or waivered rehabilitative services for the mentally retarded.

§ 4.4. Care in facilities for the mentally retarded.

A. Care in facilities for mentally retarded requires planned programs for habilitative needs or health related services which exceed the level of room, board, and supervision of daily activities. Such cases shall be combination of habilitative, rehabilitative, and health

services directed toward increasing the functional capacity of the retarded person. Examples of services shall include training in the activities of daily living, task-learning skills, socially acceptable behaviors, basic community living programming, or health care and health maintenance. The overall objective of programming shall be the attainment of the optimal physical, intellectual, social, or task learning level which the person can presently or potentially achieve.

B. The evaluation and reevaluation for care in a facility for the mentally retarded shall be based on the needs of the person, the reasonable expectations of the resident's capabilities, the appropriateness of programming, whether progress is demonstrated from the training and, in an institution, whether the services could reasonably be provided in a less restrictive environment.

§ 4.5. Patient assessment criteria.

The patient assessment criteria are divided into broad categories of needs, or services provided. These must be evaluated in detail to determine the abilities/skills which will be the basis for the development of a plan for care. The evaluation process will demonstrate a need for programming an array of skills and abilities or health care services. These have been organized in seven major categories. Level of functioning in each category is graded from the most dependent to the least dependent. In some categories, the dependency status is rated by the degree of assistance required. In other categories, the dependency is established by the frequency of a behavior or ability to perform a given task.

§ 4.6. Categories.

The resident must meet the indicated dependency level in two or more of categories 1 through 7.

1. Health status. To meet this category:

a. Two or more questions must be answered with a 4, or

b. Question "j" must be answered "yes."

2. Communication skills. To meet this category three or more questions must be answered with a 3 or a 4.

3. Task learning skills. To meet this category three or more questions must be answered with a 3 or a 4.

4. Personal care. To meet this category:

a. Question "a" must be answered with a 4 or a 5, or

b. Question "b" must be answered with a 4 or a 5, or

c. Questions "c" and "d" must be answered with a 4 or a 5.

5. Mobility. To meet this category:

Any one question must be answered with a 4 or a 5.

6. Behavior. To meet this category:

Any one question must be answered with a 3 or a 4.

7. Community living. To meet this category:

a. Any two of the questions "b," "e," or "g" must be answered with a 4 or a 5, or

b. Three or more questions must be answered with a 4 or a 5.

§ 4.7. Level of functioning survey.

A. HEALTH STATUS.

How often is nursing care or nursing supervision by a licensed nurse required for the following? (Key: 1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)

1. Medication administration and/or evaluation for effectiveness of a medication regimen? ..1.....2.....3.....4

2. Direct services: i.e., care for lesions, dressings, treatments, (other than shampoos, foot powder, etc.) .....1.....2.....3.....4

3. Seizures control .....1.....2.....3.....4

4. Teaching diagnosed disease control and care, including diabetes .....1.....2.....3.....4

5. Management of care of diagnosed circulatory or respiratory problems .....1.....2.....3.....4

6. Motor disabilities which interfere with all activities of Daily Living Bathing, Dressing, Mobility, Toileting, etc. .....1.....2.....3.....4

7. Observation for choking/aspiration while eating, drinking? .....1.....2.....3.....4

8. Supervision of use of adaptive equipment, i.e., special spoon, braces, etc. .....1.....2.....3.....4

9. Observation for nutritional problems (i.e., undernourishment, swallowing difficulties, obesity .....1.....2.....3.....4

10. Is age 55 or older, has a diagnosis of a chronic disease and has been in an institution 20 years or more .....1.....2.....3.....4

B. COMMUNICATION.

Using the Key 1=regularly, 2=often, 3=sometimes, 4=rarely, how often does this person

1. Indicate wants by pointing, vocal noises, or signs? .....1.....2.....3.....4

2. Use simple words, phrases, short sentences? .....1.....2.....3.....4

3. Ask for at least ten things using appropriate names? .....1.....2.....3.....4

4. Understand simple words, phrases or instructions containing prepositions: i.e., "on" "in" "behind"? .....1.....2.....3.....4

5. Speak in an easily understood manner? .....1.....2.....3.....4

6. Identify self, place of residence, and significant others? .....1.....2.....3.....4

C. TASK LEARNING SKILLS.

How often does this person perform the following activities (Key: 1=regularly, 2=often, 3=sometimes, 4=rarely)

1. Pay attention to purposeful activities for 5 minutes? .....1.....2.....3.....4

2. Stay with a 3-step task for more than 15 minutes? .....1.....2.....3.....4

3. Tell time to the hour and understand time intervals? .....1.....2.....3.....4

4. Count more than 10 objects? .....1.....2.....3.....4

5. Do simple addition, subtraction? .....1.....2.....3.....4

6. Write or print ten words? .....1.....2.....3.....4

7. Discriminate shapes, sizes, or colors? .1.....2.....3.....4

8. Name people or objects when describing pictures? .....1.....2.....3.....4

9. Discriminate between "one," "many," "lot"? .....1.....2.....3.....4

D. PERSONAL and SELF CARE.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structures, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

1. Perform toileting functions: i.e., maintain bladder and bowel continence, clean self, etc.? .....1.....2.....3.....4.....5

2. Perform eating/feeding functions: i.e., drinks liquids and eats with spoon or fork, etc.? ...1.....2.....3.....4.....5

3. Perform bathing function: i.e., bathe, runs bath, dry self, etc.? .....1.....2.....3.....4.....5

4. Dress self completely, i.e., including fastening, putting on clothes, etc.? .....1.....2.....3.....4.....5

E. MOBILITY.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structures, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

1. Move, (walking, wheeling) around environment? .....1.....2.....3.....4.....5

2. Rise from lying down to sitting positions, sits without support? .....1.....2.....3.....4.....5

3. Turn and position in bed, roll over? .....1.....2.....3.....4.....5

F. BEHAVIOR.

How often does this person (Key: 1=Rarely, 2=Sometimes, 3=Often, and 4=Regularly)

1. Engage in self destructive behavior? ..1.....2.....3.....4

2. Threaten or do physical violence to others? .....1.....2.....3.....4

3. Throw things, damage property, have temper outbursts? .....1.....2.....3.....4

4. Respond to others in a socially unacceptable manner (without undue anger, frustration, or hostility) .....1.....2.....3.....4

G. COMMUNITY LIVING SKILLS.

With what type of assistance can this person currently (Key: 1=No Assistance, 2=Prompting/Structures, 3=Supervision, 4=Some Direct Assistance, 5=Total Care)

1. Prepare simple foods requiring no mixing or cooking? .....1.....2.....3.....4.....5

2. Take care of personal belongings, room (excluding vacuuming, ironing, clothes washing/drying, wet mopping)? .....1.....2.....3.....4.....5

3. Add coins of various denominations up to one dollar? .....1.....2.....3.....4.....5

4. Use the telephone to call home, doctor, fire, police? .....1.....2.....3.....4.....5

5. Recognize survival signs/words: i.e., stop, go, traffic lights, police, men, women, restrooms, danger, etc.?
.....1.....2.....3.....4.....5

6. Refrain from exhibiting unacceptable sexual behavior in public? .....1.....2.....3.....4.....5

7. Go around cottage, ward, building, without running away, wandering off, or becoming lost?
.....1.....2.....3.....4.....5

8. Make minor purchases, i.e., candy, soft drink, etc?
.....1.....2.....3.....4.....5

VR 460-04-3.1300. Regulations for Outpatient Physical Rehabilitative Services.

§ 1. Scope

A. Physical therapy and related services shall be defined as physical therapy, occupational therapy, and speech-language pathology services.

B. Physical therapy and related services shall be prescribed by a physician and be part of a written plan of care.

C. Any one of these services may be offered as the sole rehabilitative service and is not contingent upon the provision of another service.

D. All practitioners and providers of services shall be required to meet State and Federal licensing or certification requirements.

§ 2. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services, or by a school district employing qualified physical therapists.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine.

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 3. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services, or a school district employing qualified therapists.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association under the supervision of an occupational therapist as defined above, 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 or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 4. Services for individuals with speech, hearing, and language disorders.

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language therapy services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and ~~Speech~~ *Speech-Language* Pathology; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

§ 5. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, *school divisions,* or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service ~~within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization.~~ *annually.* The provider shall maintain documentation to justify the need for services. A visit shall be defined as the duration of time that a rehabilitative therapist is with a client to provide services prescribed by the physician. Visits shall not be defined in measurements or increments of time.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized ~~by using the Rehabilitation Treatment Authorization form (DMAS-125). This request must be signed and dated by a physician~~ . *Documentation for medical justification must include physician orders or a plan of care signed and dated by the physician.* Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS. Periods of care beyond those allowed which have not been authorized by DMAS shall not be approved for payment.

§ 6. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a rehabilitation agency, or a school district shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

5. Include a copy of the physician's orders and plan of care;

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school districts) 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; and

8. in school districts, include an individualized

education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

§ 7. Service limitations.

The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology services:

1. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

2. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

3. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

4. 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.

5. 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.

6. Rehabilitation care is to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

VR 460-04-8.10. Regulation for Long-Stay Acute Care Hospitals.

§ 1. Scope.

Medicaid shall cover long-stay acute care hospital services as defined in § 2 provided by hospitals certified as long-stay acute care hospitals and which have provider agreements with the Department of Medical Assistance Services.

§ 2. Authorization for services.

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. Prior authorization shall be required by submission of the information described above. Physician certification must accompany the request. Periods of care not authorized by the Department of Medical Assistance Services shall not be approved for payment.

§ 3. Criteria for long-stay acute care hospital stays.

A. Adult long-stay acute care hospital criteria.

1. The resident must have long-term health conditions requiring close medical supervision, 24-hour licensed nursing care, and specialized services or equipment needs. The population to be served includes individuals requiring mechanical ventilation, individuals with communicable diseases requiring universal or respiratory precautions, individuals requiring ongoing intravenous medication or nutrition administration, and individuals requiring comprehensive rehabilitative therapy services.

2. At a minimum, the individual 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 on which the resident resides, 24 hours a day), and coordinated multidisciplinary team approach to meet needs.

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

a. 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

b. 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

c. The individual must require at least one of the

following special services:

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

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

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

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

(5) 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

(6) 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.)

B. Pediatric/adolescent patients in long-stay acute care hospitals criteria.

1. To be eligible for long-stay acute care hospital services, the child must have ongoing health conditions requiring close medical supervision, 24-hour licensed nursing supervision, and specialized services or equipment needs. The recipient must be age 21 or under. The population to be served includes children requiring mechanical ventilation, those with communicable diseases requiring universal or respiratory precautions (excluding normal childhood diseases such as chicken pox, measles, strep throat, etc.), those requiring ongoing intravenous medication or nutrition administration, those requiring daily dependence on device-based respiratory or nutritional support (tracheostomy, gastrostomy, etc.), those requiring comprehensive rehabilitative therapy services, and those with a terminal illness.

2. 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 on which the child is residing 24 hours a day), and a coordinated multidisciplinary team approach to meet needs.

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

a. 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, five days 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

b. 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

c. Must require at least one of the following special services:

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

(2) 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.);

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

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

(5) 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);

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

(7) Services required for terminal care.

4. 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 specific needs of the child and must be provided in an organized manner that encourages the child to participate. 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. The services must be provided for a minimum of two hours per day.

§ 4. Documentation requirements.

A. Services not specifically documented in the resident's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

B. The long-stay acute care hospital shall maintain and retain the business and professional records sufficient to document fully and accurately the nature, scope, and details of the health care provided. Such records shall be retained for a period of not less than five years from the date of service or as provided by applicable state laws, whichever period is longer, except that, if an audit is initiated within the required retention period, the records must be retained until the audit is completed and every exception resolved.

C. The following documentation must be maintained in the resident's medical record:

1. Each record must identify the resident on each page.

2. Entries must be signed and dated (month, day, and year) by the author, followed by professional title. Care rendered by personnel under the supervision of the provider, which is in accordance with Medicaid policy, must be countersigned by the responsible licensed participating provider.

3. The attending physician must certify at the time of admission that the resident requires long-stay acute hospital care and meets the criteria as defined by DMAS.

4. The record must contain a preliminary working diagnosis and the elements of a history and physical examination upon which the diagnosis is based.

5. All services provided, as well as any treatment plan, must be entered in the record. Any drugs prescribed and administered as part of a physician's treatment plan, including the quantities, route of administration, and the dosage must be recorded.

6. The record must indicate the resident's progress, any change in diagnosis or treatment, and the response to the treatment. The documentation must include in detail all treatment rendered to the resident in accordance with the plan with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment.

7. Physician progress notes must be written at least weekly and must reflect that the resident has been examined by the physician.

8. A comprehensive nursing assessment must be made by a registered nurse at the time of admission to the facility. Nursing care plans based on an admission assessment must be resident-specific and must indicate realistic nursing needs, measurable goals, and specifically state the method by which the goals are to be accomplished. They must be updated as needed, but at least monthly. Nursing summaries, in addition to the p.r.n. (as needed) notes, are required weekly. Nursing summaries must give a current, written picture of the resident, the resident's nursing needs, the care being provided, and the resident's response to treatment. The nursing summary at a minimum must address the following: medical status; functional status in activities of daily living, elimination, mobility, and emotional/mental status; special nursing procedures; and identification and resolution of acute illnesses or episodes.

9. Social services documentation must include a social evaluation and history and a social services plan of care including a discharge plan. The social work plans of care must be resident-specific and include measurable goals with realistic time frames. Social work plans of care must be updated as needed and at least monthly every 30 days. Social services progress notes must be written at least every 30 days.

10. Activities documentation must be based on a comprehensive assessment completed by the designated activity coordinator. An activity plan of care must be developed for each resident and must include consideration of the individual's interests and skills, the physician's recommendations, social and rehabilitation goals, and personal care requirements. Individual and group activities must be included in the plan. The activity plan of care must be updated as needed but at least every 30 days. Activity progress notes must be written at least every 30 days. Therapeutic leisure activities must be provided daily.

11. Rehabilitative therapy (physical and occupational therapy or speech-language services) or other health care professional (psychologist, respiratory therapist, etc.) documentation must include an assessment completed by the qualified rehabilitation professional. A plan of care developed specific to the resident must be developed and must include measurable goals with realistic time frames. The plan of care must be updated as needed but at least every 30 days. Rehabilitative therapy or other health care professional progress notes must be written at least every 30 days.

12. Each resident's record must contain a dietary evaluation and plan of care completed by a registered dietician. The plan of care must be resident-specific and must have measurable goals within realistic time frames. The plan of care must be updated as needed, but at least every 30 days. The dietary assessment and monthly plans of care must be completed by a registered dietician. Dietary progress notes must be written at least every 30 days.

13. A coordinated interdisciplinary plan of care must be developed for each resident. The plan of care must

be resident-specific and must contain measurable goals within realistic time frames. Based on the physician's plan of care, the interdisciplinary team should include, but is not necessarily limited to, nurses, social workers, activities coordinators, dieticians, rehabilitative therapists, direct care staff, and the resident or responsible party. At a minimum, the interdisciplinary team must review and update the interdisciplinary plan of care as needed but at least every 30 days. The interdisciplinary plan of care review must identify those attending the meeting, changes in goals and approaches, and progress made toward meeting established goals and discharge.

14. For residents age 21 and younger, the record must contain documentation that educational or habilitative services are provided as required. The documentation shall include an evaluation of the resident's educational or habilitative needs, a description of the educational or habilitative services provided, a schedule of planned programs, and records of resident attendance. Educational or habilitative progress notes shall be written at least every 30 days.

§ 5. Long-stay acute care hospital services.

All services must be provided by appropriately qualified personnel. The following services are covered long-stay acute care hospital services:

A. Physician services.

1. Physician services shall be performed by a professional who is licensed to practice in the Commonwealth, 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.

2. An attending physician means a physician who is a doctor of medicine or osteopathy and is identified by the individual as having the most significant role in the determination and delivery of the individual's medical care.

B. Licensed nursing services.

1. Must be provided 24 hours a day (a registered nurse, whose sole responsibility is the designated unit on which the resident resides, must be on the unit 24 hours a day).

2. Nursing services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by a registered nurse or licensed professional nurse, or nursing assistant under the direct supervision of a registered nurse who is experienced in providing the specialized care required by the resident.

C. Rehabilitative services.

1. Rehabilitative services shall be directly and specifically related to written plan of care designed by a physician after any needed consultation with the rehabilitation professional.

2. Physical therapy services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a physical therapist licensed by the Board of Medicine.

3. Occupational therapy services shall be of a level of complexity and sophistication, or the condition of the resident shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined.

4. Speech-language services shall be of a level of complexity and sophistication, or the condition of the resident 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~~ *Speech-Language* Pathology.

D. Ancillary services shall be provided directly and specifically related to a plan of care designed by the physician. The ancillary services may include but are not limited to dietary, respiratory therapy services, and psychological services.

1. Dietary services must be of a level of complexity or sophistication, or the nature of the resident shall be of a nature that the services can only be performed or supervised by a dietician, registered with the American Dietetic Association.

2. Respiratory therapy services must be of a level of complexity and sophistication, or the nature of the resident shall be of a nature that the services can only be performed by a respiratory therapist. Respiratory therapy services must be provided by a respiratory therapist certified by the Board of Medicine or registered with the National Board for Respiratory Care. If the facility agrees to provide care to a resident who is dependent on mechanical assistance for respiration (positive or negative pressure mechanical ventilators), respiratory therapy services must be available 24 hours daily. If the facility contracts for respiratory therapy services, a respiratory therapist must be on call 24 hours daily and available to the facility in a timely manner.

3. Psychology services shall be of a level of complexity or sophistication, or the condition shall be of a nature that the services can only be performed by a psychologist licensed by the Board of Medicine *or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical* .

4. Activity programs under the supervision of designated activities coordinators. The program of activities must include both individual and group activities which are based on consideration of interest, skills, physical and mental status, and personal care requirements.

5. Provide social services to each resident in an effort to assist the resident, his family and the facility staff in understanding the significant social and emotional factors related to the health problems, to assist with appropriate utilization of community resources and to coordinate discharge plans. Social services must be provided by a social worker with at least a bachelor's degree in social work or similar qualifications.

§ 6. Long-stay acute care hospital requirements.

A. A coordinated multidisciplinary team approach shall be implemented to meet the needs of the resident. Based on the physician's plan of care, the interdisciplinary team should include, but is not necessarily limited to, nurses, social workers, activity coordinators, dieticians, rehabilitative therapists, and any direct care staff.

B. The long-stay acute care hospital shall provide for the educational and habilitative needs of residents age 21 or younger. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must be individualized to meet the specific needs of the child and must be provided in an organized manner which encourages the child to participate. 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.

C. The long-stay acute care hospital shall provide an acceptable plan for assuring that residents requiring long-stay acute hospital care are afforded the same opportunity for participating in integrated facility activities as the other facility residents.

D. Nonemergency transportation shall be provided so that residents may participate in community activities sponsored by the facility or community activities in which the facility is providing transportation for other facility residents.

E. The long-stay acute care hospital shall coordinate discharge planning for the resident utilizing all available resources in an effort to assist the resident to maximize his potential for independence and self-sufficiency and to assure that services are being provided by the most effective level of care.

F. The long-stay acute care hospital shall provide family or caregiver training in the skills necessary for the care of the resident in the community, should the resident or the resident's caregiver so desire.

G. The long-stay acute care hospital shall provide all necessary durable medical equipment to sustain life or monitor vital signs and to carry out a plan of care designed by the physician. This equipment may include but is not limited to mechanical ventilator, apnea monitor, etc.

H. The long-stay acute care hospital shall provide utilization review activities as follows:

1. Purpose. The objective of the utilization review mechanism is the maintenance of high-quality patient care and the most efficient utilization of resources through an educational approach involving the study of patient care as well as to ensure that inpatient care is provided only when medically necessary and that the care meets quality standards.

a. In addition to the certification by the resident's physician, the hospital shall have a utilization review plan which provides for review of all Medicaid patient stays and medical care evaluation studies of admissions, durations of stay, and professional services rendered.

b. Effective utilization review shall be maintained on a continuing basis to ensure the medical necessity of the services for which the program pays and to promote the most efficient use of available health facilities and services.

2. The Department of Medical Assistance Services delegates to the local facilities' utilization review departments the utilization review of inpatient hospital services for all Medicaid admissions. The hospital must have a utilization review plan reflecting 100% review of Medicaid residents, approved by the Division of Licensure and Certification of the Department of Health, and DMAS or the appropriate licensing agency in the state in which the institution is licensed.

3. The hospital utilization review coordinator shall approve the medical necessity, based on admission criteria approved by the utilization review committee, within one working day of admission. In the event of an intervening Saturday, Sunday, or holiday, a review must be performed the next working day. This review shall be reflected in the hospital utilization review plan and the resident's record.

4. If the admission is determined medically necessary, an initial stay review date must be assigned and

reflected on the utilization review sheets. Continued or extended stay review must be assigned prior to or on the date assigned for the initial stay. If the facility's utilization review committee has reason to believe that an inpatient admission was not medically necessary, it may review the admission at any time. However, the decision of a utilization review committee in one facility shall not be binding upon the utilization review committee in another facility.

5. If the admission or continued stay is found to be medically unnecessary, the attending physician shall be notified and be allowed to present additional information. If the hospital physician advisor still finds the admission or continued stay unnecessary, a notice of adverse decision must be made within one working day after the admission or continued stay is denied. Copies of this decision must be sent by the utilization review committee's designated agent to the hospital administrator, attending physician, recipient or recipient's authorized representative, and Medicaid.

6. As part of the utilization review plan, long-stay acute care hospitals shall have one medical or patient care evaluation study in process and one completed each calendar year. Medical care evaluation studies must contain the elements mandated by 42 CFR 456.141 through 456.145. The elements are objectives of study, results of the study, evaluation of the results, and action plan or recommendations as indicated by study results.

7. The Department of Medical Assistance Services shall monitor the length of stay for inpatient hospital stays. The guidelines used shall be based on the criteria described in § 3 of these regulations. If the stay or any portion of the stay is found to be medically unnecessary, contrary to program requirements, or if the required documentation has not been received, reimbursement will not be made by Medicaid.

8. 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.

I. The long-stay acute care hospital shall provide all medical supplies necessary to provide care as directed by the physician's plan of care for the resident. These supplies may include but are not limited to suction catheters, tracheostomy care supplies, oxygen, etc.

J. The long-stay acute care hospital shall provide all nutritional elements including those that must be administered intravenously. This includes providing all necessary equipment or supplies necessary to administer the nutrients.

K. The long-stay acute care hospital shall submit all necessary health care and medical social service information on the resident to DMAS for preadmission authorization. The provider cannot bill DMAS for services that have not been preauthorized.

VA.R. Doc. No. R94-313; Filed December 7, 1993, 4:25 p.m.

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Title of Regulation: **State Plan for Medical Assistance Relating to Limiting Payment of Title XVIII Part A. VR 460-03-4.1922. Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance.**

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

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Section 9-6.14:7.1 of the Administrative Process Act (APA) provides 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, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

The Social Security Act § 1902(n) allows the states to pay for eligible individuals at the Medicaid maximum rate rather than the Medicare maximum payment in situations when dual coverage applies.

Purpose: The purpose of this proposal is to promulgate a permanent regulation, to supersede the existing emergency regulation, to provide for limiting Medicaid's payment of its portion of Part A services to Medicaid's maximum payment amount.

Summary and Analysis: This action affects Attachment 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates - Other Types of Care, item j, Payment of Title XVIII Part A and Part B Deductible/Coinsurance.

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 inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year, i.e., Medicare pays for all covered

services except for $84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this proposed permanent regulation limits the payment of the Medicare Part A coinsurance amount paid by the department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

Issues: The primary issue with regard to this proposed change is the conservation of scarce resources and their redirection to other purposes. Since the health care industry suggested this policy change as a cost savings measure, no objections are anticipated from providers.

Impact: Under the authority of the existing emergency regulation, DMAS has already instituted this change. These general fund dollars have already been deducted from the agency's appropriations. This change affects approximately 150 providers who bill Medicaid for the Medicare Part A skilled nursing coinsurance. It should have no impact on Medicaid recipients since providers are required to accept Medicaid payment as payment in full. There are approximately 1,800 Medicaid recipients for whom Medicaid pays the Medicare Part A coinsurance. DMAS expects to save $1.6 million ($800,000 GF; and $800,000 NGF) in FY 94.

Summary:

This action affects Attachment 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates - Other Types of Care, item j, Payment of Title XVIII Part A and Part B Deductible/Coinsurance.

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 inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year, i.e., Medicare pays for all covered services except for $84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this proposed permanent regulation limits the payment of the Medicare Part A coinsurance amount paid by the department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

VR 460-03-4.1922. 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

** This payment rate applies only to SNF patients only for XVIII Part A coinsurance.

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.

VA.R. Doc. No. R94-339; Filed December 8, 1993, 11:49 a.m.

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Title of Regulation: **State Plan for Medical Assistance Relating to 95% Rule; Criminal Record Checks; Blood Borne Pathogens.**
VR 460-03-4.1940:1. Nursing Home Payment System.
VR 460-03-4.1941. Uniform Expense Classification.

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

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to

administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. Section 9-6.14:7.1 of the Administrative Process Act (APA) also provides 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, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

Title 42 of the Code of Federal Regulations Part 447 regulates the reimbursement for Medicaid covered services.

Purpose: The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, regarding nursing facility 95% occupancy rule and criminal record checks. This proposal also provides for permanent regulations for the reimbursement for nursing facilities' costs of complying with OSHA requirements for protecting employees against exposure to blood.

Summary and Analysis: The section of the State Plan for Medical Assistance affected by this regulatory action is the Nursing Home Payment System (PIRS) (VR 460-03-4.1940:1). The three issues will be discussed in the established order.

95% Occupancy Rule

Prior to the emergency regulation, the DMAS set a nursing facility's ("NF") interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could have resulted in a new provider receiving substantial overpayment during the first nine months of the second fiscal year. The overpayment would have been collected during the ninth month of the second fiscal year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

Criminal Record Checks

The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T), directed DMAS to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia.

Prior to the emergency regulation, nursing facilities were required by § 32.1-126.01 of the Code of Virginia to obtain, within 30 days of employment, an original criminal record clearance or an original criminal history record from the Central Criminal Records Exchange. The nursing facility was prohibited from hiring an individual who had been convicted of any of the crimes enumerated in § 32.1-126.01 of the Code of Virginia.

The providers record the cost of obtaining the criminal records check as an administrative and general cost and such costs are subject to the operating ceilings.

The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T) required that the provider be reimbursed for the cost of obtaining the criminal records check, made by the Central Criminal Records Exchange, by a pass-through methodology similar to that used to reimburse plant costs.

The requirements of § 32.1-126.01 of the Code of Virginia are being incorporated into the Nursing Home Payment System in Part VIII, § 8.1.

Blood Borne Pathogens

The Occupational Safety and Health Administration (OSHA) promulgated a standard, effective March 6, 1992, to eliminate or minimize occupational exposure to blood borne pathogens (final rule published in the December 6, 1991, Federal Register, adopting 29 CFR 1910.1030). The Virginia Safety and Health Codes Board of the Department of Labor and Industry adopted these regulations as VR 415-02-83, effective June 1, 1992 (published in The Virginia Register of Regulations, pp. 2145-2158, March 23, 1992).

The Joint Legislative Audit and Review Commission, in its December 1992 study of Medicaid-financed long-term care in Virginia, recommended that DMAS develop a methodology to determine the costs of Virginia's requirement that nursing home employees be protected from blood borne pathogens. The General Assembly (in Item 312.1 of the 1993 Budget Bill) directed DMAS to study the cost of reimbursing nursing facilities for complying with these new requirements.

DMAS has completed its study and, with input from the nursing facility community, is proposing revisions to the State Plan to permit reimbursement for these required costs. Effective July 1, 1994, the indirect peer group ceilings will be increased by not more that $.09 per day for the Hepatitis B immunizations and by $.07 per day for other OSHA compliance costs. This rate adjustment will be increased for inflation for SFY 1996 and following.

If DMAS takes no action with respect to the cost of the OSHA requirements, some of the cost would still be reimbursed under existing rate setting rules. However, some facilities would be reimbursed less than all the costs of implementation, and some would receive little or no additional reimbursement. Even those facilities with costs below the ceilings would be paid a lower "profit incentive" (reward for efficient operations), resulting in their funding some of the OSHA costs out of their profit incentive. Therefore, the proposed amendment intends to reimburse nursing facility providers for the cost of complying with the OSHA requirements.

Issues:

95% Rule

Because of the timing of setting a nursing facility's interim plant rate, a new provider might be substantially overpaid. The proposed amendment, which applies the 95% occupancy requirement on the first day of a new provider's second fiscal year, would eliminate potential overpayments which then must be recovered from the provider.

Criminal Record Checks

The 1993 General Assembly directed the reimbursement of nursing facilities for costs which must be incurred when criminal background checks are performed on employees, as required by law.

Blood Borne Pathogens

OSHA has required that employees be protected against exposure to blood borne pathogens. DMAS is revising its State Plan to reimburse nursing facilities for required Hepatitis B immunizations and other OSHA compliance costs.

Impact: These issues are discussed in the order established above.

95% Rule

This regulation prevents overpayments of approximately $350,00 GF per year that would be subsequently recovered. Therefore, there is no financial impact.

Criminal Record Checks

The Appropriations Act, Chapter 994 of the Acts of the Assembly Item 313.T, provides $33,000 General Fund and directs the department to take this action.

Blood Borne Pathogens

DMAS analyzed cost data from a sample of Virginia facilities and reviewed implementation cost estimates developed by the federal government for purposes of Medicare reimbursement. DMAS has also estimated the amount of cost already included in its forecast, and has reduced the projected total cost by that amount. Based on the foregoing, DMAS has requested funding in the Governor's proposed budget as follows:

State FY	Estimated Per Day Cost	Projected Days	Less Costs Already in DMAS Forecast	Projected Total Cost
1995	$.16	7,425,830	$100,630	$1,087,503
1996	$.168	7,557,335	$114,260	$1,155,372

(Note: The per day cost for 1996 is increased to reflect approximate inflation costs for the period.)

Forms: Reimbursement for criminal record checks will be accomplished through completion of Cost Report Schedule J-2 by the provider. This form is being developed by the department.

DMAS will require a form to be filed by each nursing facility during its fiscal year ending during SFY 1994 to report certain immunization information.

Summary:

The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, regarding nursing facility 95% occupancy rule and criminal record checks. This proposal also provides for permanent regulations for the reimbursement for nursing facilities' costs of complying with OSHA requirements for protecting employees against exposure to blood.

The section of the State Plan for Medical Assistance affected by this regulatory action is the Nursing Home Payment System (PIRS) (VR 460-03-4.1940:1). The three issues will be discussed in the established order.

95% Occupancy Rule

Prior to the emergency regulation, the DMAS set a nursing facility's ("NF") interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could have resulted in a new provider receiving substantial overpayment during the first nine months of the second fiscal year. The overpayment would have been collected during the ninth month of the second fiscal year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

Criminal Record Checks

The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T), directed DMAS to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia.

Prior to the emergency regulation, nursing facilities were required, by § 32.1-126.01 of the Code of Virginia, to obtain, within 30 days of employment, an original criminal record clearance or an original criminal history record from the Central Criminal Records Exchange. The nursing facility was prohibited

from hiring an individual who had been convicted of any of the crimes enumerated in § 32.1-126.01 of the Code of Virginia.

The providers record the cost of obtaining the criminal records check as an administrative and general cost and such costs are subject to the operating ceilings.

The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T) required that the provider be reimbursed for the cost of obtaining the criminal records check, made by the Central Criminal Records Exchange, by a pass-through methodology similar to that used to reimburse plant costs.

The requirements of § 32.1-126.01 of the Code of Virginia are being incorporated into the Nursing Home Payment System in Part VIII, § 8.1.

Blood Borne Pathogens

The Occupational Safety and Health Administration (OSHA) promulgated a standard, effective March 6, 1992, to eliminate or minimize occupational exposure to blood borne pathogens (final rule published in the December 6, 1991, Federal Register, adopting 29 CFR 1910.1030). The Virginia Safety and Health Codes Board of the Department of Labor and Industry adopted these regulations as VR 415-02-83, effective June 1, 1992 (published in The Virginia Register of Regulations, pp. 2145-2158, March 23, 1992).

The Joint Legislative Audit and Review Commission, in its December 1992 study of Medicaid-financed long-term care in Virginia, recommended that DMAS develop a methodology to determine the costs of Virginia's requirement that nursing home employees be protected from blood borne pathogens. The General Assembly (in Item 312.1 of the 1993 Budget Bill) directed DMAS to study the cost of reimbursing nursing facilities for complying with these new requirements.

DMAS has completed its study and, with input from the nursing facility community, is proposing revisions to the State Plan to permit reimbursement for these required costs. Effective July 1, 1994, the indirect peer group ceilings will be increased by not more that $.09 per day for the Hepatitis B immunizations and by $.07 per day for other OSHA compliance costs. This rate adjustment will be increased for inflation for SFY 1996 and following.

If DMAS takes no action with respect to the cost of the OSHA requirements, some of the cost would still be reimbursed under existing rate setting rules. However, some facilities would be reimbursed less than all the costs of implementation, and some would receive little or no additional reimbursement. Even those facilities with costs below the ceilings would be paid a lower "profit incentive" (reward for efficient operations), resulting in their funding some of the OSHA costs out of their profit incentive. Therefore, the proposed amendment intends to reimburse nursing facility providers for the cost of complying with the OSHA requirements.

VR 460-03-4.1940:1. Nursing Home Payment System Patient Intensity Rating System.

PART I.
INTRODUCTION.

§ 1.1. Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document. The formula provides for incentive payments to efficiently operated NFs and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Three separate cost components are used: plant cost, operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded

(ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification) and must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supercede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement, the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II.
RATE DETERMINATION PROCEDURES.

Article 1.
Plant Cost Component.

§ 2.1. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§ 2.2. New nursing facilities and bed additions.

A. 1. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see § 2.10.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF. Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued.

§ 2.3. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing $100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's reporting period).

B. Providers (including related organizations as defined in § 2.10) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before

initiating any major capital expenditures. All bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see § 2.10.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with § 2.2 B.

§ 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 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 and debt cancellation 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, 2.1 C, and 2.14 A.

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 2.4 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 commitment 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 subdivision 3 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 subdivision 3 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 5.0% 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 2.0% 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.

§ 2.5. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to

the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part XVI - Revaluation of Assets. Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of § 2.10, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See § 2.10 C for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.

2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building, fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).

2. No depreciation adjustment shall be made in the event of a loss or abandonment.

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

a. That a sale or transfer is about to be made;

b. The location and general description of the property to be sold or transferred;

c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and

d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least 30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2.
Operating Cost Component.

§ 2.6. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

§ 2.7. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. In accordance with § 1.3, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in VR 460-03-1491. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in VR 460-03-4.1941 as direct patient care operating costs and NATCEPs costs.

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See VR 460-03-4.1944 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SIIs.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SIIs to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See VR 460-03-4.1944 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under § 2.7 A shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both §§ 2.7 A 5 a and 2.7 A 5 c. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NFs next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its

prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs.

1. Allowable plant costs shall be reimbursed in accordance with Part II, Article 1. Plant costs shall not include the component of cost related to making or producing a supply or service.

2. NATCEPs cost shall be reimbursed in accordance with Part VII.

E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day		Difference % of Ceiling	Sliding Scale	Scale % Difference
$30.00	$27.00	$3.00	10%	$.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0		0	

2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement.

A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility.

In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice.

To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

§ 2.8. Phase-in period.

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate calculated at 33% of the PIRS operating cost rates determined by § 2.7 above and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rates determined by § 2.7 above and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in § 2.7 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See VR 460-03-4.1944 for example calculations.

§ 2.8. Nursing facility rate change.

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3.
Allowable Cost Identification.

§ 2.9. Allowable costs.

Costs which are included in rate determination procedures and final settlement shall be only those

allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see VR 460-03-4.1941, Uniform Expense Classification).

A. Certification.

The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. Operating costs.

1. Direct patient care operating costs shall be defined in VR 460-03-4.1941.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920).

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in VR 460-03-4.1941, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

C. Allowances/goodwill.

Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

D. Cost of protecting employees from blood borne pathogens.

Effective July 1, 1994, reimbursement of allowable costs shall be adjusted in the following way to recognize the costs of complying with requirements of the Occupational Safety and Health Administration (OSHA) for protecting employees against exposure to blood borne pathogens.

1. Hepatitis B immunization. The statewide median of the reasonable acquisition cost per unit of immunization times the number of immunizations provided to eligible employees during facility fiscal years ending during SFY 1994, divided by Medicaid days in the same fiscal period, shall be added to the indirect peer group ceiling effective July 1, 1994. This increase to the ceilings shall not exceed $.09 per day for SFY 1995.

2. Other OSHA compliance costs. The indirect peer group ceilings shall be increased by $.07, effective July 1, 1994, to recognize continuing OSHA compliance costs other than immunization.

3. Data submission by nursing facilities. Nursing facilities shall provide for fiscal years ending during SFY 1994, on forms provided by DMAS, (i) the names, job titles and social security numbers of individuals immunized, the number of immunizations provided to each and the dates of immunization; and (ii) the acquisition cost of immunization.

§ 2.10. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of § 2.5 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See VR 460-03-4.1943, Cost Reimbursement Limitations.)

B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and

daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in § 2.2. Reimbursement shall be in accordance with § 2.10 A with the limitations stated in § 2.2 B.

§ 2.11. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see VR 460-03-4.1943, Cost Reimbursement Limitations).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

C. Compensation for all administrators (owner and nonowner) shall be based upon a 40 hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

§ 2.12. Depreciation.

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

§ 2.13. Rent/Leases.

Rent or lease expenses shall be limited by the provisions of VR 460-03-4.1942, Leasing of Facilities.

§ 2.14. Provider payments.

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, an interim settlement shall be made by DMAS within 180 days after receipt and review of the cost report. The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;

2. Insolvency of the provider at the time the cost report is submitted;

3. Lack of a valid provider agreement and decertification;

4. Moneys owed to DMAS;

5. Errors or inconsistencies in the cost report; or

6. Incomplete/nonacceptable cost report.

§ 2.15. Legal fees/accounting.

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in VR 460-03-4.1943, Cost Reimbursement Limitations.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

§ 2.16. Documentation.

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

§ 2.17. Fraud and abuse.

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be

disclosed in subsequent cost reports if the provider wishes to reserve appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4.
New Nursing Facilities.

§ 2.18. Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

E. On the first day of its second cost reporting period, a new nursing facility's interim plant rate shall be converted to a per diem amount by dividing it by the number of patient days computed as 95% of the daily licensed bed complement during the first cost reporting period.

~~E.~~ *F.* Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2.8.

~~F.~~ *G.* During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

§ 2.19. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2.18 A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to § 2.7 F.)

Article 5.
Cost Reports.

§ 2.20. Cost report submission.

A. 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, it is considered delinquent. The cost report shall be deemed complete for the purpose of cost settlement when DMAS has received all of the following, with the exception that the audited financial statements required by subdivisions 3 a and 6 b of this subsection shall be considered timely filed if received not later than 120 days after the provider's fiscal year end:

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

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

3. a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, footnotes to the financial statements, and the management report. Multi-facility providers shall be governed by § 2.20 A 6;

b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;

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

5. Depreciation schedule ;

6. NFs which are part of a chain organization must also file:

a. Home office cost report;

b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report and footnotes to the financial statements;

c. The NFs 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 cash flows;

d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and

7. Such other analytical information or supporting documentation that may be required by DMAS.

B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

§ 2.21. Reporting form.

All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

§ 2.22. Accounting method.

The accrual method of accounting and cost reporting is mandated for all providers.

§ 2.23. Cost report extensions.

A. Extension for submission of a cost report may be granted if the provider can document extraordinary circumstances beyond its control.

B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;

2. Financial statements not completed;

3. Office or building renovations;

4. Home office cost report not completed;

5. Change of stock ownership;

6. Change of intermediary;

7. Conversion to computer; or

8. Use of reimbursement specialist.

§ 2.24. Fiscal year changes.

All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6.
Prospective Rates.

§ 2.25. Time frames.

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See § 2.20 A.) The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992. Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7.
Retrospective rates.

§ 2.26. The retrospective method of reimbursement shall be used for Mental Health/Mental Retardation facilities.

§ 2.27. (reserved)

Article 8.

Record Retention.

§ 2.28. Time frames.

A. All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and until such time as all cost reports are settled. Examples of such information are set forth in § 2.29.

§ 2.29. Types of records to be maintained.

Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;

2. Itemized depreciation schedules;

3. Mortgage documents, loan agreements, and amortization schedules;

4. Copies of all cost reports filed with the DMAS together with supporting financial statements.

§ 2.30. Record availability.

The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9.
Audits.

§ 2.31. Audit overview.

Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

§ 2.32. Scope of audit.

The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

§ 2.33. Field audit requirements.

Field audits shall be required as follows:

1. For the first cost report on all new NF's.

2. For the first cost report in which costs for bed additions or other expansions are included.

3. When a NF is sold, purchased, or leased.

4. As determined by DMAS desk audit.

§ 2.34. Provider notification.

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

§ 2.35. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining

adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

§ 2.36. Audit delay.

In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in § 2.20 B.

§ 2.37. Field audit time frames.

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of § 2.35.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in §§ 2.35 and 2.37, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART III.
APPEALS.

§ 3.1. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues.

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.

2. The organization of participating NF's into peer groups according to location as a proxy for cost variation across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.

3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.

4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.

5. The establishment of separate ceilings for direct operating costs and indirect operating costs.

6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

a. Determination of resource indexes for each patient class that measures relative resource cost.

b. Determination of each NF's average relative resource cost index across all patients.

c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3.2. Conditions for appeal.

A. An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.

2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.

3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3.3. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Division of Cost Settlement and Audit after an informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 30 business days of the date of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3.4. Formal hearing procedures.

Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3.5. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons;

A. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C. Extensions of time frames shall be granted to the DMAS for good cause shown.

D. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E. Disputes relating to the time lines established in § 3.3 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3.6. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

2. The appropriate DMAS division must receive the reconsideration request within 30 business days after the date of a DMAS Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review.

The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action.

The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review.

A state-operated provider may, within 30 business days after the date of the informal review decision of the division director, request hat the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever

measures he deems appropriate to resolve the dispute.

F. Secretarial review.

If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 business days after the date of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

PART IV.
INDIVIDUAL EXPENSE LIMITATION.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in VR 460-03-4.1943, Cost Reimbursement Limitations.

PART V.
COST REPORT PREPARATION INSTRUCTIONS.

Instructions for preparing NF cost reports will be provided by the DMAS.

PART VI.
STOCK TRANSACTIONS.

§ 6.1. Stock acquisition.

The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

§ 6.2. Merger of unrelated parties.

A. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

§ 6.3. Merger of related parties.

The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

PART VII.
NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAM AND COMPETENCY EVALUATION PROGRAMS (NATCEPs).

§ 7.1. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

§ 7.2. NATCEPs costs.

A. NATCEPs costs shall be as defined in VR 460-03-4.1941.

B. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. The NATCEPs interim reimbursement rate determined in § 7.2 B shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in § 7.2 B times the Medicaid patient days from the DMAS MMR-240.

E. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

F. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in § 2.14 A.

PART VIII.
~~(Reserved)~~
CRIMINAL RECORDS CHECKS FOR NURSING FACILITY EMPLOYEES.

§ 8.1. Criminal records checks.

A. This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313 T).

B. A licensed nursing facility shall not hire for

compensated employment persons who have been convicted of:

1. Murder;

2. Abduction for immoral purposes as set out in § 18.2-48 of the Code of Virginia;

3. Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;

4. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia;

5. Pandering as set out in § 18.2-355 of the Code of Virginia;

6. Crimes against nature involving children as set out in § 18.2-361 of the Code of Virginia;

7. Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1 of the Code of Virginia;

8. Abuse and neglect of children as set out in § 18.2-371.1 of the Code of Virginia;

9. Failure to secure medical attention for an injured child as set out in § 18.2-314 of the Code of Virginia;

10. Obscenity offenses as set out in § 18.2-374.1 of the Code of Virginia; or

11. Abuse or neglect of an incapacitated adult as set out in § 18.2-369 of the Code of Virginia.

C. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in subsection B regardless of whether the conviction or charges occurred in the Commonwealth.

D. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates for whatever reason.

E. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

F. Reimbursement to the provider shall be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual charges shall be a pass-through cost which is not a part of the operating or plant cost components.

PART IX.
USE OF MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART X.
COMMINGLED INVESTMENT INCOME.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART XI.
PROVIDER NOTIFICATION.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART XII.
START-UP COSTS AND ORGANIZATIONAL COSTS.

§ 12.1. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial need not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the Program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

§ 12.2. Applicability.

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid

or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

§ 12.3. Organizational costs.

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

PART XIII.
DMAS AUTHORIZATION.

§ 13.1. Access to records.

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the propriety and allocation of costs (in accordance with Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in § 2.10 who provide assets and other goods and services to the provider.

PART XIV.
HOME OFFICE COSTS.

§ 14.1. General.

Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

§ 14.2. Purchases.

Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

§ 14.3. Allocation of home office costs.

Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

§ 14.4. Nonrelated management services.

Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

§ 14.5. Allowable and nonallowable home office costs.

Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

§ 14.6. Equity capital.

Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

PART XV.
REFUND OF OVERPAYMENTS.

§ 15.1. Lump sum payment.

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 audit, 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' determination of the overpayment.

§ 15.2. Offset.

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 be used to reduce the balance of the overpayment.

§ 15.3. Payment schedule.

A. 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 in writing 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 in writing an extended repayment schedule.

B. 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 DMAS may approve a repayment schedule of up to 36 months.

C. A provider shall have no more than one extended repayment schedule in place at one time. If subsequent audits identify 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 amounts.

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

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

§ 15.4. Extension request documentation.

In the written 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.

§ 15.5. Interest charge on extended repayment.

A. 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.

B. 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.

C. 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.

PART XVI.
REVALUATION OF ASSETS.

§ 16.1. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or

2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See § 2.5 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;

2. Appraised replacement cost value; or

3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

VR 460-03-4.1941. Uniform Expense Classification.

§ 1. Foreword.

The attached is the classification of expenses applicable to the Nursing Facility Payment System.

Allowable expenses shall meet all of the following requirements; necessity, reasonableness, nonduplication, related to patient care, not exceeding the limits or ceilings established in the Payment System and meet applicable Medicare principles of reimbursement.

§ 2. Direct patient care operating costs.

A. Nursing service expenses.

1. Salary-Nursing Administration. Gross salary (includes sick pay, holiday pay, vacation pay, staff development pay and overtime pay) of all licensed nurses in supervisory positions defined as follows (Director of Nursing, Assistant Director of Nursing, nursing unit supervisors and patient care coordinators).

2. Salaries - RNs. Gross salary of registered nurses.

3. Salaries - LPNs. Gross salary of licensed practical nurses.

4. Salaries - Nurse Aides. Gross salary of certified nurse aides.

5. Nursing Employee Benefits. Benefits related to registered nurses, licensed practical nurses, certified nurse aides and nursing administration personnel as defined in subdivision A 1 of this section. See § 3 B for description of employee benefits.

6. Contract Nursing Services. Cost of registered nurses, licensed practical nurses and certified nurse aides on a contract basis.

7. Supplies. Cost of supplies, including nursing and charting forms, medication and treatment records, physician order forms.

8. Professional Fees. Medical director and pharmacy consultant fees.

B. Minor medical and surgical supplies.

1. Salaries - Medical Supply. Gross salary of personnel responsible for procurement, inventory and distribution of minor medical and surgical supplies.

2. Medical Supply Employee Benefits. Benefits related to medical supply personnel. See § 3 B for description of employee benefits.

3. Supplies. Cost of items for which a separate identifiable charge is not customarily made, including but not limited to, colostomy bags; dressings; chux; rubbing alcohol; syringes; patient gowns; basins; bed pans; ice-bags and canes, crutches, walkers, wheelchairs, traction equipment and other durable

medical equipment for multi-patient use.

4. Oxygen. Cost of oxygen for which a separate charge is not customarily made.

5. Nutrient/Tube Feedings. Cost of nutrients for tube feedings.

C. Ancillary service cost.

Allowable ancillary service costs represents gross salary and related employee benefits of those employees engaged in covered ancillary services to Medicaid recipients, cost of all supplies used by the respective ancillary service departments, cost of ancillary services performed on a contract basis by other than employees and all other costs allocated to the ancillary service cost centers in accordance with Medicare principles of reimbursement. Following is a listing of all covered ancillary services:

1. Radiology

2. Laboratory

3. Inhalation Therapy

4. Physical Therapy

5. Occupational Therapy

6. Speech Therapy

7. EKG

8. EEG

9. Medical Supplies Charged to Patient

§ 3. Indirect patient care operating costs.

A. Administrative and general.

1. Administrator/Owner Assistant Administrator. Compensation of individuals responsible for administering the operations of the nursing facility. (See § 2.11 of VR 460-03-4.1940:1, Nursing Home Payment System, and VR 460-03-4.1943, Cost Reimbursement Limitations, for limitations).

2. Other Administrative and Fiscal Services. Gross salaries of all personnel in administrative, personnel, fiscal, billing and admitting, communications and purchasing departments.

3. Management Fees. Cost of fees for providing necessary management services related to nursing facility operations. (See VR 460-03-4.1943, Cost Reimbursement Limitations, for limitations).

4. Professional Fees - Accounting. Fees paid to independent outside auditors and accountants.

5. Professional Fees - Legal. Fees paid to attorneys (See VR 460-03-4.1943, Cost Reimbursement Limitations, for limitations).

6. Professional Fees - Other. Fees, other than accounting or legal, for professional services related to nursing facility patient care.

7. Director's Fees. Fees paid for attendance at scheduled meetings which serve as reimbursement for time, travel, and services provided. (See VR 460-03-4.1943, Cost Reimbursement Limitations, for limitations.)

8. Membership Fees. Fees related to membership in health care organizations which promote objectives in the providers' field of health care activities (See VR 460-03-4.1943, Cost Reimbursement Limitations, for limitations).

9. Advertising (Classified). Cost of advertising to recruit new employees and yellow page advertising.

10. Public Relations. Cost of promotional expenses including brochures and other informational documents regarding the nursing facility.

11. Telephone. Cost of telephone service used by employees of the nursing facility.

12. Subscriptions. Cost of subscribing to newspapers, magazines and periodicals.

13. Office Supplies. Cost of supplies used in administrative departments (e.g., pencils, papers, erasers, staples).

14. Minor furniture and equipment. Cost of furniture and equipment which does not qualify as a capital asset.

15. Printing and Postage. Cost of reproducing documents which are reasonable, necessary and related to nursing facility patient care and cost of postage and freight charges.

16. Travel. Cost of travel (airfare, auto mileage, lodging, meals, etc. by administrator or other authorized personnel on official nursing facility business). (See VR 460-03-4.1943, Cost Reimbursement Limitations, for limitations).

17. Auto. All costs of maintaining nursing facility vehicles, including gas, oil, tires, licenses, maintenance of such vehicles.

18. License Fees. Fees for licenses, including state, county, and local business licenses, and VHSCRC filing fees.

19. Liability Insurance. Cost of insuring the facility

against liability claims.

20. Interest. Other than mortgage and equipment.

21. Amortization/Start-Up Costs. Amortization of allowable Start-Up Costs (See § 12.1 of the Nursing Home Payment System).

22. Amortization/Organizational Costs. Amortization of allowable organization costs (see § 12.3 of the Nursing Home Payment System).

B. Employee benefits.

1. FICA (Social Security). Cost of employer's portion of Social Security Tax.

2. State Unemployment. State Unemployment Insurance Costs.

3. Federal Unemployment. Federal Unemployment Insurance Costs.

4. Workers' Compensation. Cost of Workers' Compensation Insurance.

5. Health Insurance. Cost of employer's contribution to employee health insurance.

6. Group Life Insurance. Cost of employer's contribution to employee Group Life Insurance.

7. Pension Plan. Employer's cost of providing pension program for employees.

8. Other employee benefits. Cost of awards and recognition ceremonies for recognition and incentive programs, disability insurance, child care, and other commonly offered employee benefits which are nondiscriminatory.

C. Dietary expenses.

1. Salaries. Gross salary of kitchen personnel, including dietary supervisor, cooks, helpers, and dishwashers.

2. Supplies. Cost of items such as soap, detergent, napkins, paper cups, and straws.

3. Dishes and Utensils. Cost of knives, forks, spoons, plates, cups, saucers, bowls and glasses.

4. Consultants. Fees paid to consulting dietitians.

5. Purchased Services. Costs of dietary services performed on a contract basis.

6. Food. Cost of raw food.

7. Nutrient Oral Feedings. Cost of nutrients in oral feedings.

D. Housekeeping expenses. (See § 6.)

1. Salaries. Gross salary of housekeeping personnel, including housekeepers, maids and janitors.

2. Supplies. Cost of cleaners, soap, detergents, brooms and lavatory supplies.

3. Purchased Services. Cost of housekeeping services performed on a contract basis.

E. Laundry expenses.

1. Salaries. Gross salary of laundry personnel.

2. Linen. Cost of sheets, blankets and pillows.

3. Supplies. Cost of such items as soap, detergent, starch and bleach.

4. Purchased Services. Cost of other services, including commercial laundry service.

F. Maintenance and Operation of Plant. (See § 6.)

1. Salaries. Gross salary of personnel involved in operating and maintaining the physical plant, including maintenance men or plant engineer and security services.

2. Supplies. Cost of supplies used in maintaining the physical plant, including light bulbs, nails, lumber, glass.

3. Painting. Supplies and contract services.

4. Gardening. Supplies and contract services.

5. Heating. Cost of heating oil, natural gas, or coal.

6. Electricity. Self-explanatory.

7. Water, Sewer, and trash removal. Self-explanatory.

8. Purchased Services. Cost of maintaining the physical plant, fixed equipment, moveable equipment and furniture and fixtures on a contract basis.

9. Repairs and Maintenance. Supplies and contract services involved with repairing the facility's capital assets.

G. Medical records expenses.

1. Salaries-Medical Records. Gross salary of licensed medical records personnel and other department personnel.

2. Utilization Review. Fees paid to physicians attending

utilization review committee meetings.

3. Supplies. All supplies used in the department.

4. Purchased Services. Medical records services provided on a contract basis.

H. Quality Assurance Expenses.

1. Salaries. Gross salary of personnel providing quality assessment and assurance activities.

2. Purchased Services. Cost of quality assessment and assurance services provided on a contract basis.

3. Supplies. Cost of all supplies used in the department or activity.

I. Social services expenses.

1. Salaries. Salary of personnel providing medically-related social services. A facility with more than 120 beds must employ a full-time qualified social worker.

2. Purchased Services. Cost of medically-related social services provided on a contract basis.

3. Supplies. Cost of all supplies used in the department.

J. Patient activity expenses.

1. Salaries. Gross salary of personnel providing recreational programs to patients, such as arts and crafts, church services and other social activities

2. Supplies. Cost of items used in the activities program (i.e., games, art and craft supplies and puzzles).

3. Purchased Service. Cost of services provided on a contract basis.

K. Educational activities expenses.

1. Salaries. Gross salaries of training personnel.

2. Supplies. Cost of all supplies used in this activity.

3. Purchased Services. Cost of training programs provided on a contract basis.

L. Other nursing administrative costs.

1. Salaries - Other Nursing Administration. Gross salaries of ward clerks and nursing administration support staff.

2. Subscriptions. Cost of subscribing to newspapers, magazines and periodicals.

3. Office Supplies. Cost of supplies used in nursing administrative departments (e.g., pencils, papers, erasers, staples).

4. Purchased Services. Cost of nursing administrative consultants, ward clerks, nursing administration support staff performed on a contract basis.

5. Advertising (Classified). Cost of advertising to recruit all nursing service personnel.

M. Home Office Costs. Allowable operating costs incurred by a home office which are directly assigned to the nursing facility or pooled operating costs that are allocated to the nursing facility in accordance with § 14.3 of the Nursing Home Payment System.

§ 4. Plant costs.

A. Interest.

1. Building Interest. Interest paid or accrued on notes, mortgages and other loans, the proceeds of which were used to purchase the nursing facility's real property. (See § 2.4 of the Nursing Home Payment System for Limitations)

2. Equipment Interest. Interest paid or accrued on notes, chattel mortgages and other loans, the proceeds of which were used to purchase the nursing facility' equipment. (See § 2.4 of the Nursing Home Paymen. System for limitations)

B. Depreciation (See § 2.12 of the Nursing Home Payment System).

1. Building Depreciation. Depreciation on the nursing facility's building.

2. Building Improvement Depreciation. Depreciation on major additions or improvements to the nursing facility (i.e., new laundry or dining room).

3. Land Improvement Depreciation. Depreciation of improvements made to the land occupied by the facility (i.e., paving, landscaping).

4. Fixed and movable equipment depreciation. Depreciation on capital equipment depreciation assets classified as fixed and moveable equipment in compliance with American Hospital Association Guidelines.

5. Leasehold Improvement Depreciation. Depreciation on major additions or improvements to building or plant where the facility is leased and the costs are incurred by the lessee (tenant).

6. Automobile Depreciation. Depreciation of those vehicles utilized solely for facility/patient services.

C. Lease/Rental.

1. Building Rental. Rental amounts paid by the provider on all rented or leased real property (land and building).

2. Equipment Rental. Rental amounts paid by the provider on leased or rented furniture and equipment.

D. Taxes.

Property Taxes. Amount of taxes paid on the facility's property, plant and equipment.

E. Insurance.

1. Property Insurance. Cost of fire and casualty insurance on buildings and equipment.

2. Mortgage Insurance. Premiums required by the lending institution, if the lending institution is made a direct beneficiary and if premiums meet Medicare principles of reimbursement criteria for allowability.

F. Amortization-Deferred Financing Costs.

Amortization of Deferred Financing Costs (those costs directly incident to obtaining financing of allowable capital costs related to patient care services such as legal fees; guarantee fees; service fees; feasibility studies; loan points; printing and engraving costs; rating agency fees). These deferred financing costs should be capitalized and amortized over the life of the mortgage.

G. Home office capital costs.

Allowable plant costs incurred by a home office which are directly identified to the nursing facility or pooled capital costs that are allocated to the nursing facility in accordance with § 14.3 of the Nursing Home Payment System.

§ 5. Nonallowable expenses.

Nonallowable expenses include but are not limited to the following:

1. Barber and Beautician. Direct and indirect operating and capital costs related to the provision of beauty and barber services to patients.

2. Personal Items. Cost of personal items, such as cigarettes, toothpaste, and shaving cream sold to patients.

3. Vending Machines. Cost of items sold to employees and patients including candy bars and soft drinks.

4. Television/Telephones. Cost of television sets and telephones used in patient rooms.

5. Gift Shop. Direct and indirect operating and capital cost related to the provision of operating a gift shop.

6. Insurance - Officers. Cost of life insurance on officers, owners and key employees where the provider is a direct or indirect beneficiary.

7. Income Taxes. Taxes on net income levied or expected to be levied by any governmental entity.

8. Contributions. Amounts donated to charitable or other organizations which have no direct effect on patient care.

9. Deductions from Revenue. Accounts receivable written off as bad debts, charity, courtesy or from contractual agreements are nonallowable expenses.

10. Advertising. The cost of advertisements in magazines, newspapers, trade publications, radio, and television and certain home office expenses as defined in PRM-15.

11. Cafeteria. Cost of meals to other than patients.

12. Pharmacy. Cost of all prescribed legend and nonlegend drugs.

13. Medical Supplies. Cost of medical supplies to other than patients.

14. Plant Costs. All plant costs not available for nursing facility patient care related activities are nonreimbursable plant costs.

§ 6. Nurse aide training and competency evaluation programs and competency evaluation programs (NATCEPs) costs.

A. Facility-based NATCEPs costs.

1. Salary - Staff Development. Gross salary of personnel conducting the nurse aide training and competency evaluation programs.

2. Employee Benefits. Benefits related to personnel conducting the nurse aide training and competency evaluation programs. See § 3 B for description of employee benefits.

3. Contract Services. Cost of state qualified nurse aide instructors paid on a contract basis.

4. Supplies. Cost of supplies used in conducting NATCEPs (e.g., pencils, papers, erasers, staples, textbooks and other required course materials).

5. License Fees. Cost of nurse aide registry application fees and competency evaluation testing fees paid by the NFs in behalf of the certified nurse aides.

6. Housekeeping Expenses. Housekeeping expense as defined in § 3 D for NFs which dedicate space in the facility to NATCEPs activities 100%. Housekeeping expenses shall be allocated to the NATCEPs operations in accordance with Medicare Principles of Reimbursement.

7. Maintenance and Operation of Plant. Maintenance and operation of plant as defined in § 3 F for NFs which dedicate space in the facility to NATCEPs activities 100%. Maintenance and operation of plant expense shall be allocated to the NATCEPs operations in accordance with Medicare Principles of Reimbursement.

8. Other Direct Expenses. Any other direct costs associated with the operation of the NATCEPs. There shall be no allocation of indirect patient care operating costs as defined in § 3, except housekeeping and maintenance and operation of plant expenses.

B. Nonfacility-based NATCEPs costs.

1. Contract Services. Cost of training and competency evaluation of nurse aides paid to an outside state-approved nurse aide education program.

2. Supplies. Cost of supplies of textbooks and other required course materials provided during the nurse aide education programs by the NF.

3. License Fees. Cost of nurse aide registry application fees and competency evaluation testing fee paid by the NF on behalf of the certified nurse aides.

4. Travel. Cost for transportation provided to the nurse aides to the training or competency evaluation testing site.

§ 7.1. Criminal records background check.

Providers will be reimbursed the cost of obtaining criminal records checks from the Central Criminal Records Exchange for all persons hired for compensated employment after July 1, 1993.

VA.R. Doc. No. R94-338; Filed December 8, 1993, 11:54 a.m.

Department of Medical Assistance Services
Hepatitis B Immunization Reporting Form

Name of Nursing Facility: _____
Provider Number: _____
Fiscal Year End: _____

93 DEC -8 AM 11:55
REGISTRAR OF REGULATIONS

	Employee Name	Job Title	Employee Social Security Number	Number of Immunizations	Date of Immunizations	Total Cost of Immunizations
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
TOTAL						

SCHEDULE J-2
CALCULATION OF CRIMINAL RECORD CHECK COSTS REIMBURSEMENT

PROVIDER NAME: _____
PROVIDER NUMBER: _____
PERIOD FROM/TO: _____

PART I This Nursing Home Payment System has been amended for Criminal History Record Checks costs incurred on or after July 1, 1993, for potential employment applicants paid to the Virginia State Police by Nursing Facilities (NF) to be reimbursed on a pass-through basis. Please complete the following Schedule claiming the allowable Criminal History Record Checks Costs incurred by the NF during the current cost reporting period.

	(1) APPLICANT NAME	(2) APPLICANT POSITION	(3) HIRED YES/NO	(4) DATE OF HIRE	(5) DATE PAID	(6) AMOUNT PAID
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
21.						
22.						
23.						
24.						
25.						
26.						
27.						
28.						
29.						
30.	TOTAL CRIMINAL HISTORY RECORD CHECK COSTS (SUM OF LINES 1-29, COLUMN 6)					

PART II CALCULATION OF TITLE XIX CRIMINAL HISTORY RECORD CHECK COSTS REIMBURSEMENT

1.	Total Criminal History Record Check Costs (Part I, Col. 6, Line 30)	1.
2.	Total Patient Days (Schedule H, Page 1, Part I, Line 1)	2.
3.	Total Criminal History Record Check Costs Rate (Line 1/Line 2)	3.
4.	Total Title XIX Patient Days (Schedule H, Page 1, Part I, Line 2)	4.
5.	Total Title XIX Criminal Record Check Costs Reimbursement (Line 3 X Line 4)	5.

- Transfer Part I, Column 6, Total to Schedule A-3, Line 6 or Schedule B, Line 55A, Column 2, as appropriate.
- Attach Schedule H needed for additional applicants.

PIRS 1090 SERIES
SCHEDULE J-2
EFFECTIVE 07/01/93

* * * * * * * *

Title of Regulation: **State Plan for Medical Assistance Relating to Home Health Reimbursement.**
VR 460-03-4.1923. Establishment of Rate Per Visit.

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

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

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. Section 9-6.14:7.1 of the Administrative Process Act (APA) provides 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, the agency is initiating the public notice and comment process as contained in Article 2 of the APA.

Purpose: This proposal will promulgate permanent regulations to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

Summary and Analysis: The section of the State Plan for Medical Assistance affected by this action is Supplement 3 to Attachment 4.19 B, Methods and Standards for Establishing Payment Rates – Other Types of Care, Establishment of Rate Per Visit.

The 1993 General Assembly (GA), in the Appropriations Act (Item 313.P), directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The GA also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission (JLARC) recommended that a revision be made to the existing statistical methodology.

Before adoption of the emergency regulations, the agency's policy, effective July 1, 1991, changed the reimbursement methodology for home health services from cost reimbursed to fee based. It reimbursed home health agencies (HHAs) at a flat rate per visit for each type of service rendered and for each level of service for each of three peer groups (urban, rural and Northern Virginia). It further divided the three peer groups into freestanding and hospital-based HHAs and established the Department of Health's agencies as a separate peer group.

By virtue of the 1993 GA mandate, the peer groups no longer distinguished between freestanding and hospital-based HHAs and there no longer were urban and rural peer groups. The basis for establishing rates became the weighted median cost per service from the 1989 cost-settled Medicaid cost reports filed by freestanding HHAs. Based on certain JLARC recommendations, the agency modified its statistical approach by eliminating the adjustment to remove outliers before determining the peer group medians.

Issues: The primary issue with home health agency reimbursement, in switching from a cost-based methodology to a fee-for-service methodology, was to develop a methodology which would appropriately and adequately reimburse for costs incurred by both freestanding agencies and agencies financially attached to acute and long-term care institutions.

Impact: Chapter 994 of the Acts of the Assembly item 313.P directed the department to take this action. DMAS funding has already been reduced by $500,000 GF for this program change. DMAS' calculation shows that, under the pre-July 1, 1993, HHA reimbursement methodology, it would pay an estimated $5.0 million in general funds for fiscal year 1994. This amount is estimated to be reduced to $4.5 million in general funds by (i) eliminating the distinction between urban and rural peer groups; (ii) utilizing the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; (iii) reimbursing hospital-based home health agencies at the rate set for freestanding home health agencies; and (iv) eliminating the adjustment to remove outliers. Therefore, the department estimates that this amendment will result in a reduction in budgeted general funds of approximately $500,000 for fiscal year 1994, the reduction is reflected in the FY 94 appropriation. The impact on urban, rural and hospital-based home health agencies will be the reduction of their payments by $500,000 GF.

Summary:

This proposal will promulgate permanent regulations to supersede existing emergency regulations which were adopted pursuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The section of the State Plan for Medical Assistance affected by this action is Supplement 3 to Attachment 4.19 B, Methods and Standards for Establishing Payment Rates – Other Types of Care, Establishment of Rate Per Visit.

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Before adoption of the emergency regulations, the agency's policy, effective July 1, 1991, changed the reimbursement methodology for home health services from cost reimbursed to fee based. It reimbursed home health agencies (HHAs) at a flat rate per visit for each type of service rendered and for each level of service for each of three peer groups (urban, rural and Northern Virginia). It further divided the three peer groups into freestanding and hospital-based HHAs and established the Department of Health's agencies as a separate peer group.

By virtue of the 1993 GA mandate, the peer groups no longer distinguished between freestanding and hospital-based HHAs and there no longer were urban and rural peer groups. The basis for establishing rates became the weighted median cost per service from the 1989 cost-settled Medicaid cost reports filed by freestanding HHAs. Based on certain JLARC recommendations, the agency modified its statistical approach by eliminating the adjustment to remove outliers before determining the peer group medians.

VR 460-03-4.1923. Establishment of Rate Per Visit.

§ 1. Effective for dates of services on and after July 1, 1991, the Department of Medical Assistance Services (DMAS) shall reimburse home health agencies (HHAs) at a flat rate per visit for each type of service rendered by HHAs (i.e., nursing, physical therapy, occupational therapy, speech-language pathology services, and home health aide services.) In addition, supplies left in the home and extraordinary transportation costs will be paid at specific rates.

§ 2. *Effective for dates of services on and after July 1, 1993,* DMAS shall establish a flat rate for each level of service for HHAs ~~located in~~ *by* ~~three~~ peer ~~groups~~ *group* . ~~These peer groups shall be determined by the geographic location of the HHA's operating office and shall be classified as: URBAN, RURAL, or NORTHERN VIRGINIA.~~ *There shall be three peer groups: (i) the Department of Health's HHAs, (ii) non-Department of Health HHAs whose operating office is located in the Virginia portion of the Washington DC-MD-VA metropolitan statistical area, and (iii) non-Department of Health HHAs whose operating office is located in the rest of Virginia.* The use of the Health Care Financing Administration (HCFA) designation of urban determining the appropriate peer group for these classifications.

~~§ 3. A separate grouping shall be established within each of the three peer groups to distinguish between freestanding and hospital-based HHAs. This shall account for the higher costs of hospital-based agencies resulting from Medicare cost allocation requirements.~~ The Department of Health's agencies ~~shall be established~~ *are being placed* in ~~another~~ *a separate* peer group due to their unique cost characteristics (only one consolidated cost report is filed for all Department of Health agencies).

§ 3. Rates shall be calculated as follows:

~~1.~~ *A.* Each home health agency shall be placed in its appropriate peer group.

~~2.~~ *B.* Home health agencies' Medicaid cost per visit (exclusive of medical supplies costs) shall be obtained from the 1989 cost-settled Medicaid Cost Reports *filed by freestanding HHAs* . Costs shall be inflated to a common point in time (June 30, 1991) by using the percent of change in the moving average factor of the Data Resources, Inc. (DRI), National Forecast Tables for the Home Health Agency Market Basket.

~~3.~~ *C.* To determine the flat rate per visit effective July 1, ~~1991~~ *1993* , the following methodology shall be utilized.

~~a. Each HHA's per visit rate shall be normalized for those peer groups that have different wage indexes as determined by Medicare for the MSAs in Virginia.~~

~~b. The normalized HHA peer group rates and visits shall be adjusted to remove any HHA per visit rates that are outside of plus or minus one standard deviation from the peer group mean to eliminate any data that might distort the median rate per visit determination.~~

~~c.~~ *1.* The peer group HHA's per visit rates shall be ranked and weighted by the number of Medicaid visits per discipline to determine a median rate per visit for each peer group at July 1, 1991.

~~d. The HHA's rate effective July 1, 1991, shall be the lower of the peer group median or the Medicare upper limit per visit for each discipline.~~

2. The HHA's peer group median rate per visit for each peer group at July 1, 1991, shall be the interim peer group rate for calculating the update through January 1, 1992. The interim peer group rate shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1992, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation to the end of December 31, 1993, to establish the final peer group rates. The lower of the final peer group rates

or the Medicare upper limit at January 1, 1993, will be effective for payments from July 1, 1993, through December 1993.

~~c.~~ *3.* Separate rates shall be provided for the initial assessment, follow-up, and comprehensive visits for skilled nursing and for the initial assessment and follow-up visits for physical therapy, occupational therapy, and speech therapy. The comprehensive rate shall be 200% of the follow-up rate, and the initial assessment rates shall be $15 higher than the follow-up rates. The lower of the peer group median or Medicare upper limits shall be adjusted as appropriate to assure budget neutrality when the higher rates for the comprehensive and initial assessment visits are calculated.

~~4.~~ *D.* The fee schedule shall be adjusted annually on or about January 1, based on the ~~percent~~ *percentage* 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. The method to calculate the annual update shall be:

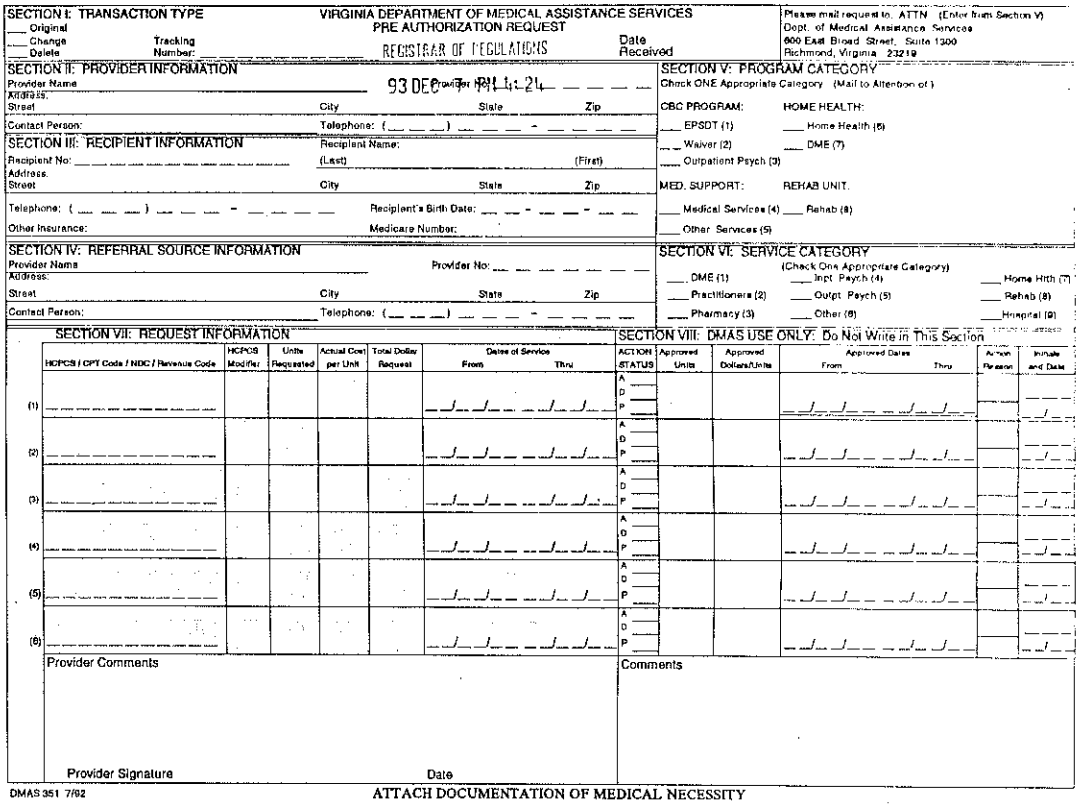
~~a. The HHA's peer group rate effective July 1, 1991, shall become the final peer group rate for the first partial year ending December 31, 1991, and shall be the interim peer group rate for calculating the update January 1, 1992. For all HHA peer groups the interim peer group rate shall be updated for 100% of historical inflation from July 1, 1991, through December 31, 1991, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation to the end of December 31, 1992, to establish the final peer group rate. The lower of the final peer group rates or the Medicare upper limit at January 1, 1992, will be effective for payments from January 1, 1992, through December 31, 1992.~~

~~There will be a one time adjustment made for those HHA final peer group rates that were established at July 1, 1991, based on the Medicare upper limits. The peer group median and the Medicare upper limit at July 1, 1991, shall be updated by 100% of historical inflation from July 1, 1991, through December 31, 1991. The final interim peer group rate shall be the lower of the two which shall be updated by 50% of the forecasted inflation to the end of December 31, 1992, to establish the final peer group. For these peer groups the lower of the final peer group rate or the Medicare upper limit at January 1, 1992, will be effective from July 1, 1992, through December 31, 1992.~~

~~b.~~ *1.* All subsequent year peer group rates shall be calculated utilizing ~~this same method with~~ the previous final interim peer group rate established on January 1 becoming the interim peer group rate at December 31 each year. The interim peer group rate shall be updated for 100% of historical inflation for the previous twelve months, January 1 through December 31, and shall become the final interim peer group rate which shall be updated by 50% of the forecasted inflation for the subsequent 12 months, January 1 through December 31.

~~c.~~ *2.* The annual update shall be compared to the Medicare upper limit per visit in effect on each January 1, and the HHA's shall receive the lower of the annual update or the Medicare upper limit per visit as the final peer group rate.

VA.R. Doc. No. R94-314; Filed December 7, 1993, 4:22 p.m.



SECTION I: TRANSACTION TYPE
___ Original
___ Change
___ Delete
Tracking Number:

VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
PRE AUTHORIZATION REQUEST

Date Received

REGISTRAR OF REGULATIONS
93 DEC 27 PM 4:24

Please mail request to: ATTN (Enter from Section V)
Dept. of Medical Assistance Services
600 East Broad Street, Suite 1300
Richmond, Virginia 23219

SECTION II: PROVIDER INFORMATION
Provider Name
Address:
Street City State Zip
Contact Person: Telephone: ( ) - -

SECTION III: RECIPIENT INFORMATION
Recipient No:
Recipient Name:
(Last) (First)
Address:
Street City State Zip
Telephone: ( ) - - Recipient's Birth Date: - -
Other Insurance: Medicare Number:

SECTION IV: REFERRAL SOURCE INFORMATION
Provider Name
Provider No:
Address:
Street City State Zip
Contact Person: Telephone: ( ) - -

SECTION V: PROGRAM CATEGORY
Check ONE Appropriate Category (Mail to Attention of)

CBC PROGRAM:
___ EPSDT (1)
___ Waiver (2)
___ Outpatient Psych (3)

HOME HEALTH:
___ Home Health (6)
___ DME (7)

MED. SUPPORT:
___ Medical Services (4)
___ Other Services (5)

REHAB UNIT:
___ Rehab (8)

SECTION VI: SERVICE CATEGORY
(Check One Appropriate Category)
___ DME (1)
___ Practitioners (2)
___ Pharmacy (3)
___ Inpt Psych (4)
___ Outpt Psych (5)
___ Other (6)
___ Home Hlth (7)
___ Rehab (8)
___ Hospital (9)

SECTION VII: REQUEST INFORMATION

	HCPCS / CPT Code / NDC / Revenue Code	HCPCS Modifier	Units Requested	Actual Cost per Unit	Total Dollar Request	Dates of Service From	Dates of Service Thru
(1)							
(2)							
(3)							
(4)							
(5)							
(6)							

SECTION VIII: DMAS USE ONLY: Do Not Write in This Section

ACTION STATUS	Approved Units	Approved Dollars/Units	Approved Dates From	Approved Dates Thru	Action Reason	Initials and Date
A D P						
A D P						
A D P						
A D P						
A D P						
A D P						

Provider Comments

Comments

Provider Signature Date

DMAS 351 7/92

ATTACH DOCUMENTATION OF MEDICAL NECESSITY

INSTRUCTION FORM – PREAUTHORIZATION REQUEST

SECTION I: Transaction Type

Check appropriate Transaction:
Original – use for new requests
Change – use for adjustment of original request
Delete – use for void of original request

(Original tracking number must appear on all requests for changes and/or deletions)

SECTION II: Provider Information (Provider who will deliver and bill for requested service)

Provider Name: Complete Address of Provider

Provider No: Complete Provider Number (7 DIGITS)

Complete Address of Provider
Identify locality that service is being provided from; (All correspondence will be sent to the address identified on your provider agreement)

Contact Person: Identify the contact person for DMAS to call if the reviewer has questions

Telephone No.: Identify the telephone number of the contact person (Including Area Code)

SECTION III: Recipient Information

Recipient No.: Complete Medicaid Number (12 DIGITS)
It is your responsibility to verify Recipient Medicaid eligibility before submitting request or providing items

Recipient: Recipient's Full Name (Last & First Name)

Address: Complete Address of Recipient (use current address of Medicaid Recipient; include box#, street address, city, state and zip code)

Telephone No.: Complete Telephone Number of Recipient (Including area code)

Date of Birth: Full Date of Birth (MONTH, DAY, YEAR)

Medicare No.: Complete Medicare Number (10 DIGITS)

Other Insurance: Identify any other insurance that the recipient has (include the name of the insurance carrier and the policy number if available)

SECTION IV: Referral Source Information (If the Provider making a referral for the requested services is not the same Provider who will deliver the service, this section should be completed)

Provider Name: Full Name of Provider

Provider No.: Complete Provider Number (7 DIGITS)

Address: Complete Address of Provider (Use the current address of the referral source; include box number, street address, city and zip code)

Contact Person: Identify the contact person for DMAS to call if the reviewer has questions

Telephone No.: Identify the telephone number of the contact person (Including Area Code)

SECTION V: Program Category

Check the appropriate program from which recipient is eligible to receive requested service (Select only 1 program per request)

SECTION VI: Service Category

Check the appropriate category for which request refers to (Select only 1 service category per request)

SECTION VII: Request Information

Procedure Code: Procedure code (Revenue, HCPCS, or NDC Code) which identifies the specific service being requested, must be completed for request to be considered

If specific code is not established, please provide a complete narrative description of service being requested in the Provider Comment Section

Procedure Modifier: Use appropriate Procedure Modifier; refer to Billing Chapter of the Provider Manual

Units Requested: Identify Units requested using the established Billing Units; If authorization is needed because more than the established allowable is needed, Only list the amount in excess of the allowable

Actual Cost: Must be completed when requesting service item that requires DMAS consideration for pricing (Request must include a Description, Manufacture name, Catalog number and copy of Purchase Invoice)

Total Dollar Requested: Identify Total Dollars requested based on corresponding Procedure Codes and Units Requested

Dates of Service: Identify Dates of Service for which the corresponding Procedure Codes and Units are Requested

Signature of Provider and Date of Request must appear in Section VII
ATTACH DOCUMENTATION OF MEDICAL NECESSITY; IF A HOME HEALTH PARTICIPANT, THE HOME HEALTH PLAN OF CARE MUST BE ATTACHED

SECTION VIII: DMAS USE ONLY – DO NOT WRITE IN THIS SECTION

MAIL TO: ATTENTION_____UNIT
DMAS – 600 EAST BROAD STREET, SUITE 1300
RICHMOND, VA 23219

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

18.B. Activities Permitted

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

19. Mental Status: 1 Oriented; 2 Comatose; 3 Forgetful; 4 Depressed; 5 Disoriented; 6 Lethargic; 7 Agitated; 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. Verbal Start of Care and Nurse's Signature and Date Where Applicable:

24. Physician's Name and Address

25. Date HHA Received Signed POT

26. I ☐ certify ☐ recertify that the above home health services are required and are authorized by me with a written plan for treatment which will be periodically reviewed by me. This patient is under my care, is confined to his home, and is in need of intermittent skilled nursing care and/or physical or speech therapy or has been furnished home health services based on such a need and no longer has a need for such care or therapy, but continues to need occupational therapy.

27. Attending Physician's Signature (Required on 485 Kept on File in Medical Records of HHA) | Date Signed

Health Care Financing Administration — OMB No. 0938-0357

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

18. Supplementary Plan of Treatment on File from Physician Other than Referring Physician: ☐ Y ☐ N
(If Yes, Please Specify Giving Goals/Rehab. Potential/Discharge Plan)

19. Unusual Home/Social Environment

20. Indicate Any Time When the Home Health Agency Made a Visit and Patient was Not Home and Reason Why it Ascertainable

21. Specify Any Known Medical and/or Non-Medical Reasons the Patient Regularly Leaves Home and Frequency of Occurrence

22. Nurse or Therapist Completing or Reviewing Form | Date (Mo., Day, Yr.)

Department of Health and Human Services
Health Care Financing Administration

Form Approved
OMB No. 0938-0357

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.	

REGISTRAR OF REGULATIONS
93 DEC -7 PM 4:24

9. Signature of Physician	10. Date

11. Optional Name/Signature of Nurse/Therapist	12. Date

BOARD OF NURSING HOME ADMINISTRATORS

Title of Regulation: **VR 500-01-3. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information.)

Basis: Section 54.1-3100 et seq. of the Code of Virginia establishes the general powers and duties of the Board of Nursing Home Administrators which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes

these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

a. The process and content required for petitions for rulemaking.

b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.

b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.

c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Nursing Home Administrators. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.

VR 500-01-3. Public Participation Guidelines.

PART I.
GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Nursing Home Administrators. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. Definitions.

The following words and 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.

"Board" means the Board of Nursing Home Administrators.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

PART II.
MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.

2. A Notice of Comment Period.

3. A copy of any final regulation adopted by the board.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV.
ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R94-304; Filed December 2, 1993, 2:42 p.m.

BOARD OF PHARMACY

Title of Regulation: **VR 530-01-3. Public Participation Guidelines.**

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted until February 26, 1994.
(See Calendar of Events section for additional information.)

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Pharmacy which include the promulgation of regulations. Section 9-6.14:7.1 of the Administrative Process Act establishes the statutory requirements for public participation in the regulatory process.

Purpose: The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the board. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The regulations replace emergency regulations currently in effect.

Substance:

Part I sets forth the purpose of guidelines for public participation in the development and promulgation of regulations.

Section 2.1 establishes the composition of the mailing list and the process for adding or deleting names from that list.

Section 2.2 lists the documents to be sent to persons on the mailing list.

Section 3.1 establishes the requirements and procedures for petitioning the board to develop or amend a regulation. The regulation sets forth the guidelines for a petition and the requirements for a response from the board.

Section 3.2 sets forth the requirements and procedures for issuing a Notice of Intended Regulatory Action.

Section 3.3 sets forth the requirements and procedures for issuing a Notice of Comment Period.

Section 3.4 sets forth the requirements and procedures for issuing a Notice of Meeting.

Section 3.5 sets forth the requirements and guidelines for a public hearing on a proposed regulation.

Section 3.6 sets forth the requirements and guidelines for a biennial review of all regulations of the board.

Section 4.1 establishes the requirements and criteria for the appointment of advisory committees in the development of regulations.

Section 4.2 establishes the requirements for determining the limitation of service for an advisory committee.

Section 4.2 A sets forth the conditions in which an advisory committee may be dissolved for lack of public response to a Notice of Intent or in the promulgation of an exempt or excluded regulation.

Section 4.2 B sets forth a term of 12 months for the existence of an advisory committee or the requirements for its continuance.

Issues: The issues addressed are those presented by the amended provisions of the Administrative Process Act. These amendments pertain to: (i) public notifications and the establishment of public participation guidelines mailing list; (ii) petitioning the board for rulemaking, the conduct of public hearings related to proposed regulations, and the conduct of biennial reviews of existing regulations; and (iii) guidelines for the use of advisory committees.

An overall issue related to whether provisions of the Administrative Process Act were to be repeated in regulation. The board generally agreed with the Registrar that provisions stated in statute should not be repeated in regulation, but in instances in which clarity was enhanced by restating or elaborating on statutory provisions, the provisions were repeated.

1. Mailing Lists and Notifications. To establish requirements for mailing lists and for documents to be mailed to persons or entities on the mailing lists.

The board proposes language to instruct persons or entities who wish to be placed on its mailing list on how to proceed and identifies explicitly those documents which will be mailed to those persons or entities. A listing of these documents, which are specified in statute, is repeated for the sake of clarity.

The proposed regulation also establishes a mechanism for identifying segments of the mailing list of interest to specific persons or entities, and for the board, at its discretion, to notify additional persons or entities of opportunities to participate in rulemaking. In addition, the proposed regulation provides for periodic updating of the mailing lists, and for removal of persons or entities when mail is returned as undeliverable.

2. Petitioning for Rulemaking/Public Hearings/Biennial Reviews. The APA, as amended, states general requirements for public petitions for rulemaking, encourages the conduct of informational proceedings and periodic reviews of existing regulations, and specifies certain information to be included in Notices of Intended Regulatory Action, Notices of Comment Periods, and Notices of Meetings. The board believes these requirements and processes should be further elaborated in regulation for the benefit of public understanding.

The board adopted as emergency provisions and proposes these regulations as recommended by the Department of Health Professions. The proposed regulations specify:

a. The process and content required for petitions for rulemaking.

b. The content of Notices of Intended Regulatory Action, including a requirement that the board state whether it intends to convene a public hearing on any proposed regulation. If no such hearing is to be held, the board shall state the reason in the notice. The notice must also indicate that a public hearing shall be scheduled during the comment period if requested by at least 25 persons or entities.

c. The content of Notices of Meetings, including a requirement that the notice indicate that copies of regulations for which an exemption from the provisions of the APA is claimed will be available prior to any meeting at which the exempted regulation is to be considered.

d. A requirement that the board conduct a public hearing during the comment period unless, at a noticed meeting, the board determines that a hearing is not required.

e. A requirement, consistent with Executive Order Number 23(90), that the board review all existing regulations at least once each biennium.

These elaborations on the Administrative Process Act

are included in the proposed regulations in the belief that the board should provide every opportunity feasible for public participation, and that any curtailment of these opportunities should require affirmative action by the board at a noticed meeting.

3. Guidelines for Use of Advisory Committees. The APA, as amended, requires that agencies specify guidelines for the use of advisory committees in the rulemaking process. The statutory provisions do not specify the content of these guidelines or the duration of appointment of advisory committees.

The board adopted emergency provisions and proposes regulations identical to those recommended by the Department of Health Professions. These proposed regulations include:

a. Provision for the board, at its discretion, to appoint an ad hoc advisory committee to assist in review and development of regulations.

b. Provision for the board, at its discretion, to appoint an ad hoc committee to provide technical or professional assistance when the board determines that such expertise is necessary, or when groups of individuals register an interest in working with the board.

c. Provisions for tenure of advisory committees and for their dissolution.

These provisions are considered necessary to specify to the public the conditions which should be met in the board's use of general or technical advisory committees in its rulemaking processes. They also avoid the continuation of such committees beyond their period of utility and effectiveness.

Estimated Impact:

A. Regulated Entities: The proposed regulations will affect those persons or entities currently on the mailing lists of the board. However, there is no estimation of how many persons or groups may be affected by notices, hearings, or appointments of ad hoc advisory committees as a result of these proposed regulations.

B. Projected Costs to Regulated Entities: There are no projected costs for compliance with proposed regulations.

C. Projected Cost for Implementation: There are no additional costs to the agency associated with the promulgation of these regulations, since the board has conducted its business in compliance with the requirements of the Administrative Process Act under existing Public Participation Guidelines.

Summary:

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Pharmacy. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia). The proposed regulations will replace emergency regulations currently in effect.

VR 530-01-3. Public Participation Guidelines.

PART I.
GENERAL PROVISIONS.

§ 1.1. Purpose.

The purpose of these regulations is to provide guidelines for the involvement of the public in the development and promulgation of regulations of the Board of Pharmacy. The guidelines do not apply to regulations exempted or excluded from the provisions of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

§ 1.2. Definitions.

The following words and 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.

"Board" means the Board of Pharmacy.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

PART II.
MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The board shall maintain a list of persons or entities who have requested to be notified of the formation and promulgation of regulations.

B. Any person or entity may request to be placed on the mailing list by indicating so in writing to the board. The board may add to the list any person or entity it believes will serve the purpose of enhancing participation in the regulatory process.

C. The board may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The board shall periodically request those on the mailing list to indicate their desire to continue to receive documents or be deleted from the list. When mail is returned as undeliverable, individuals or organizations shall be deleted from the list.

§ 2.2. Documents to be sent to persons or entities on the mailing list.

Persons or entities on the mailing list described in § 2.1 shall be mailed the following documents related to the promulgation of regulations:

1. A Notice of Intended Regulatory Action.

2. A Notice of Comment Period.

3. A copy of any final regulation adopted by the board.

4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III.
PUBLIC PARTICIPATION PROCEDURES.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the board to develop a new regulation or amend an existing regulation.

B. A petition shall include but need not be limited to the following:

1. The petitioner's name, mailing address, telephone number, and, if applicable, the organization represented in the petition.

2. The number and title of the regulation to be addressed.

3. A description of the regulatory problem or need to be addressed.

4. A recommended addition, deletion, or amendment to the regulation.

C. The board shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the board from receiving information from the public and proceeding on its own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action (NOIRA) shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The NOIRA shall indicate whether the board intends to hold a public hearing on the proposed regulation after it is published. If the board does not intend to hold a public hearing, it shall state the reason in the NOIRA.

C. The NOIRA shall state that a public hearing will be scheduled if, during the 30-day comment period, the board receives requests for a hearing from at least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period (NOCP) shall indicate that copies of the proposed regulation are available from the board and may be requested in writing from the contact person specified in the NOCP.

B. The NOCP shall indicate that copies of the statement of substance, issues, basis, purpose, and estimated impact of the proposed regulation may also be requested in writing.

C. The NOCP shall make provision for either oral or written submittals on the proposed regulation or on the impact on regulated entities and the public and on the cost of compliance with the proposed regulation.

§ 3.4. Notice of meeting.

A. At any meeting of the board or advisory committee at which the formation or adoption of regulation is anticipated, the subject shall be described in the Notice of Meeting and transmitted to the Registrar of Regulations for inclusion in The Virginia Register.

B. If the board anticipates action on a regulation for which an exemption to the Administrative Process Act is claimed under § 9-6.14:4.1 of the Code of Virginia, the Notice of Meeting shall indicate that a copy of the regulation is available upon request at least two days prior to the meeting. A copy of the regulation shall be made available to the public attending such meeting.

§ 3.5. Public hearings on regulations.

The board shall conduct a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment to an existing regulation unless, at a noticed meeting, the board determines that a hearing is not required.

§ 3.6. Biennial review of regulations.

A. At least once each biennium, the board shall conduct an informational proceeding to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance.

B. Such proceeding may be conducted separately or in conjunction with other informational proceedings or hearings.

C. Notice of the proceeding shall be transmitted to the Registrar of Regulations for inclusion in The Virginia Register and shall be sent to the mailing list identified in § 2.1.

PART IV.
ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The board may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the board.

B. The board may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the board determines that such expertise is necessary to address a specific regulatory issue or need or when groups of individuals register an interest in working with the agency.

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the board may be dissolved by the board when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The board determines that the promulgation of the regulation is either exempt or excluded from the requirements of the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia).

B. An advisory committee shall remain in existence no longer than 12 months from its initial appointment.

1. If the board determines that the specific regulatory need continues to exist beyond that time, it shall set a specific term for the committee of not more than six additional months.

2. At the end of that extended term, the board shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. No. R94-330; Filed December 8, 1993, 11:12 a.m.

VIRGINIA RACING COMMISSION

Title of Regulation: **VR 662-01-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (§ 2.24. Appeals of denial, fine, suspension or revocation of license).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public Hearing Date: February 9, 1994 - 10 a.m.
Written comments may be submitted through February 25, 1994.
(See Calendar of Events section for additional information)

Basis: Section 59.1-369 of the Code of Virginia authorizes the Virginia Racing Commission to promulgate regulations and conditions under which horse racing with pari-mutuel wagering shall be conducted.

Purpose: The Virginia Racing Commission has determined that the regulation is no longer necessary and it is repealing its provisions.

Substance: The proceedings for applicants for a license and for holders of a license, granted by the Virginia Racing Commission, will be conducted in accordance with the provisions of the Administrative Process Act and § 59.1-364 et seq. of the Code of Virginia.

Issues: The provisions of the Administrative Process Act and § 59.1-364 et seq. of the Code of Virginia are adequate to provide for the orderly conduct of proceedings involving applicants for licenses and holders of licenses granted by the Virginia Racing Commission.

Impact: This will serve to expedite proceedings involving applicants and holders of licenses.

Summary:

The Virginia Racing Commission is authorized by § 59.1-369 of the Code of Virginia to promulgate regulations for the licensure, construction and operation of horse racing facilities with pari-mutuel wagering. Section 2.24 of the regulation in effect is being repealed because the commission has determined that this section is no longer necessary.

VR 662-01-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Act" means Chapter 29 (§§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

"Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of $ .10

"Commission" means the Virginia Racing Commission.

"Enclosure" means all areas of the property of a track to which admission can be obtained only by payment of an admission fee or upon presentation of authorized credentials, and any additional areas designated by the commission.

"Horse owner" means a person owning an interest in a horse.

"Horse racing" means a competition on a set course involving a race among horses on which pari-mutuel wagering is permitted.

"Licensee" includes any person holding an owner's, operator's, limited or unlimited license, or any other license issued by the commission.

"Limited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for a period not exceeding 14 days in any calendar year.

"Member" includes any person designated a member of a nonstock corporation, and any person who by means of a pecuniary or other interest in such corporation exercises the power of a member.

"Owner's license" means a license issued by the commission allowing the holder to construct a horse racing facility for the purpose of conducting a limited or unlimited race meeting with pari-mutuel wagering privileges.

"Operator's license" means a license issued by the commission allowing the holder to conduct a horse race meeting with pari-mutuel wagering privileges.

"Pari-mutuel wagering" means the system of wagering on horse racing in which those who wager on horses that finish in the position or positions for which wagers are taken share in the total amounts wagered, less deductions required or permitted by law.

"Permit holder" includes any person holding a permit to participate in horse racing subject to the jurisdiction of the commission or in the conduct of a race meeting where pari-mutuel wagering is offered thereon as provided in the Act.

"Person" includes a natural person, partnership, joint venture, association or corporation.

"Pool" means the amount wagered during a race meeting in straight wagering, in multiple wagering, or during a specified period thereof.

"Principal stockholder" means any person who individually or in concert with his spouse and immediate family members, owns or controls, directly or indirectly, 5.0% or more of the stock of any person who is a licensee, or who in concert with his spouse and immediate family members has the power to vote or cause the vote of 5.0% or more of any such stock.

"Race meeting" means the whole consecutive period of time during which horse racing with pari-mutuel wagering is conducted by a licensee.

"Retainage" means the total amount deducted, from the pari-mutuel wagering pool in the percentages designated by statute for the Commonwealth of Virginia, purse money for the participants, Virginia Breeders Fund, and the operators.

"Stock" includes all classes of stock of an applicant or licensee corporation, and any debt or other obligation of such corporation or stockholder thereof or stock of any affiliated corporation if the commission finds that the holder of such obligation or stock derives therefrom such control of or voice in the operation of the applicant or licensee corporation that he should be deemed a stockholder.

"Totalizator" means an electronic data processing system for registering wagers placed on the outcomes of horse racing, deducting the retainage, calculating the mutuel pools and returns to ticket holders, and displaying approximate odds and payouts, including machines utilized in the sale and cashing of wagers.

"Unlimited license" means a license issued by the commission allowing the holder to conduct a race meeting or meetings, with pari-mutuel wagering privileges, for periods of 15 days or more in any calendar year.

"Virginia Breeders Fund" means the fund established to foster the industry of breeding racehorses in the Commonwealth of Virginia.

PART II.
LICENSURE.

§ 2.1. Identification of applicant for owner's, owner-operator's, operator's license.

An application shall include, on a form prepared by the commission, the name, address, and telephone number of the applicant and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

§ 2.2. Applicant's affidavit.

An application shall include, on a form prepared by the commission, an affidavit from the chief executive officer or a major financial participant in the applicant setting forth:

1. That application is made for a license to own, own-operate, or operate a horse racing facility at which pari-mutuel wagering is conducted;

2. That the affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority shall be attached;

3. That the applicant seeks a grant of a privilege from the Commonwealth of Virginia, and the burden of proving the applicant's qualifications rests at all times

with the applicant;

4. That the applicant consents to inquiries by the Commonwealth of Virginia, its employees, the commission members, staff and agents, into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

5. That the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the Commonwealth of Virginia, its employees, the commission, staff, or agents;

6. That the affiant has read the application and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated as information and belief; as to those matters, affiant believes them to be true;

7. That the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, suspension or conditioning of a license or imposition of a fine, or any or all of the foregoing;

8. That the applicant will comply with all applicable state and federal statutes and regulations, all regulations of the commission and all other local ordinances;

9. The affiant's signature, name, organization, position, address, and telephone number; and

10. The date.

§ 2.3. Disclosure of ownership and control.

An applicant must disclose:

1. The type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

2. If the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business or trade names currently or previously used by the applicant, and copies of all state and federal tax returns for the past five years;

3. If the applicant is a corporation:

a. The applicant's full corporate name and any trade names currently or previously used by the applicant;

b. The jurisdiction and date of incorporation;

c. The date the applicant began doing business in Virginia and a copy of the applicant's certificate of authority to do business in Virginia;

d. Copies of the applicant's articles of incorporation, bylaws, and all state and federal corporate tax returns for the past five years;

e. The general nature of the applicant's business;

f. Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

g. The classes of stock of the applicant. As to each class, the number of shares authorized, number of shares subscribed to, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

h. Whether the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

i. The names, in alphabetical order, and addresses of the directors and, in a separate list, officers of the applicant. The number of shares held of record directly or indirectly by each director and officer as of the application date of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

j. The names, in alphabetical order, and addresses of each recordholder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units shall be disclosed;

k. Whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of the most recent registration statement and annual report filed with the Securities and Exchange Commission;

l. Whether the securities registration and filing

requirements of the applicant's jurisdiction of incorporation have been met, and a copy of the most recent registration statement filed with the securities regulator in that jurisdiction; and

m. Whether the securities registration and filing requirements of the Commonwealth of Virginia have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with Virginia's State Corporation Commission during the past five years.

4. If the applicant is an organization other than a corporation:

a. The applicant's full name and any aliases, business, or trade names currently or previously used by the applicant;

b. The jurisdiction of organization of the applicant;

c. The date the applicant began doing business in Virginia;

d. Copies of any agreements creating or governing the applicant's organization and all of the applicant's state and federal tax returns for the past five years;

e. The general nature of the applicant's business;

f. The names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policy-making authority. As to each, the applicant must disclose the nature and extent of any ownership interest, direct or indirect, including options, or other voting interest, whether absolute or contingent, in the applicant; and

g. The names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, direct or indirect, including options, as of the date of the application, or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest.

5. If a nonindividual record or beneficial holder of an ownership or other voting interest of 5.0% or more in the applicant is identified pursuant to subdivision 3, i or j or subdivision 4, f and g, the applicant must disclose the information required by those subdivisions as to record or beneficial holders of an ownership or other voting interest of 5.0% or more in that nonindividual holder. The disclosure required by those subdivisions must be repeated, in turn, until all other voting interests of 5.0% or more in the applicant or any nonindividual holder are identified. When an applicant is unable to provide the information required, it shall explain fully and document its inability to do so;

6. Whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

7. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding ownership or operation of applicant's horse racing facility, and copies of any such agreements in writing;

8. Any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation concerning the proposed horse racing facility by the applicant, and copies of any such agreements in writing; and

9. Whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of 5.0% or more has held or holds a license or permit issued by a governmental authority to own or operate a horse racing facility, pari-mutuel wagering facility or any other form of gambling or has a financial interest in such an enterprise or conducts any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

§ 2.4. Disclosure of character information.

An applicant for a license must disclose and furnish particulars as follows whether the applicant or any individual or other entity identified pursuant to subdivisions 3 and 4 of § 2.3 and subdivisions 2 and 3 of § 2.10 of these regulations:

1. Been charged in any criminal proceeding other than a traffic violation. If so, the applicant must disclose nature of the charge, the date charged, court and disposition;

2. Had a horse racing, gambling, business, professional, or occupational license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances and disposition;

3. Been accused in an administrative or judicial proceeding of violating a statute or regulation relating to horse racing or gambling;

4. Been charged in an administrative or judicial proceeding of violating a statute or regulation relating

to unfair labor practices or discrimination;

5. Begun an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances and disposition;

6. Been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision and disposition;

7. Failed to satisfy any judgment, decree or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances; and

8. Been delinquent in filing a tax return required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

§ 2.5. Disclosure of sites and facilities.

An application for a license must disclose with respect to the pari-mutuel horse racing facility it will own, operate, or own and operate:

1. The address of the facility, ownership of site for the last five years, legal description, mortgagors, proof of title insurance, its size, and geographical location, including reference to county and municipal boundaries;

2. A site map showing existing highways and streets adjacent to the facility, and separately showing any proposed highways and streets adjacent to the facility, including their scheduled completion dates;

3. The type or types of racing for which the facility is designed, whether thoroughbred, harness standard bred, quarterhorse, or other;

4. Racetrack dimensions for each racetrack operated by the facility by:

a. Circumference;

b. Width;

c. Banking;

d. Location of chutes;

e. Length of stretch;

f. Distance from judges' stand to first turn;

g. Type of surface; and

h. Description of safety rail.

5. A description of the backstretch area, giving:

a. Dimensions and number of barns, whether open or enclosed;

b. Location and interval of barns;

c. Dimensions and number of stalls per barn;

d. Location of offices for veterinarians;

e. Location of facilities for emergency care for horses;

f. Location of facilities for feed, tack, and other vendors;

g. Location, description and number of housing units for backstretch employees;

h. Location and description of commissary, lavatory and recreational facilities for backstretch employees; and

i. Location and description of training track, if any.

6. A description of the grandstand, giving:

a. Total seating capacity;

b. Total reserved seating capacity;

c. Indoor and outdoor seating capacity;

d. Configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand;

e. The number and location of men's and women's restrooms, drinking fountains and medical facilities available to patrons; and

f. Description of public pedestrian traffic patterns throughout the grandstand.

7. A description of the post-race detention barn, giving:

a. Distance from the post-race detention barn to track and paddock;

b. Number of sampling stalls;

c. Placement of viewing ports on each;

d. Location of post-mortem floor;

e. Number of wash stalls with hot and cold water and drains;

f. Availability of video monitors and other security measures; and

g. The walking ring.

8. A description of the paddock and saddling area, giving;

a. Number of stalls in the paddock;

b. Height from the floor to lowest point of the stall ceiling and entrance;

c. Paddock public address and telephone services; and

d. Public viewing area.

9. A description of the jockeys' and drivers' quarters, giving:

a. Changing areas;

b. A listing of equipment to be installed in each; and

c. The location of the jockeys' or drivers' quarters in relation to the paddock.

10. A description of the pari-mutuel totalizator, giving:

a. Approximate location of bettors' windows and cash security areas; and

b. A description of the equipment, including vendor and manufacturer if known.

11. A description of the parking, giving:

a. Detailed attention to access to parking from surrounding streets and highways;

b. Number of parking spaces available, distinguishing between public and other;

c. A description of the road surface on parking areas and the distance between parking and grandstand; and

d. A road map of the area showing the relationship of parking to surrounding, existing and proposed streets and highways.

12. A description of the height, type of construction and materials of perimeter fence;

13. A description of improvements and equipment at the horse racing facility for security purposes in addition to perimeter fence, including the vendor and manufacturer of equipment if known;

14. A description of starting, timing, photo finish, and photo-patrol or video equipment, including the vendor and manufacturer if known;

15. A description of work areas for the commission members, officers, employees, stewards, and agents;

16. A description of the facility's access to public transportation, the types of public transportation and schedules and road maps of area which show pick-up and drop-off points; and

17. A description of manure and other refuse containers and plans for their prompt and proper removal.

§ 2.6. Disclosure of development process.

An applicant for a license must disclose with regard to development of its horse racing facility:

1. The total cost of construction of the facility, distinguishing between known costs and projected costs;

2. Separate identification of the following costs, distinguishing between known costs and projected costs:

a. Facility design;

b. Land acquisition;

c. Site preparation;

d. Improvements and equipment, separately identifying the costs of subdivisions 4 through 17 of § 2.5, and other categories of improvements and equipment; and

e. Organization, administrative, accounting, and legal.

3. Documentation of the nature of interim financing and the nature of permanent financing;

4. Documentation of fixed costs;

5. The schedule for construction of the facility, giving:

a. Acquiring land;

b. Soliciting bids;

c. Zoning and construction permit approval;

d. Awarding construction contracts;

e. Beginning construction;

f. Completing construction;

g. Training staff; and

h. Beginning of racing.

6. Schematic drawings;

7. Copies of any contracts with and performance bonds from the:

a. Architect or other design professional;

b. Project engineer;

c. Construction engineer;

d. Contractors and subcontractors; and

e. Equipment procurement personnel.

8. Whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must state which actions must be taken in order to obtain the site; and

9. Whether present construction planning envisions future expansion of the facilities and, if so, a general description of the nature of such expansion.

§ 2.7. Disclosure of financial resources.

An applicant for license must provide the following with regard to financial resources:

1. The most recent independently audited financial statement showing:

a. The applicant's current assets, including investments in affiliated entities, loans and accounts receivable;

b. Fixed assets;

c. Current liabilities, including loans and accounts payable; and

d. Long-term debt and equity; and

e. Statement of income and expenses, and statement of cash flow;

2. Equity and debt sources of funds to develop, own and operate the horse racing facility:

a. With respect to each source of equity:

(1) Contribution;

(2) Identification of the source;

(3) Amount;

(4) Form;

(5) Method of payment;

(6) Nature and amount of present commitment; and

(7) Documentation, copies of agreements and actions which the applicant will take to obtain commitments for additional amounts;

b. With respect to each source of debt:

(1) Contribution;

(2) Identification of the source;

(3) Amount;

(4) Terms of debt;

(5) Collateral;

(6) Identity of guarantors;

(7) Nature and amount of commitments; and

(8) Documentation, copies of agreements and actions which the applicant will take to obtain commitments for additional amounts; and

3. Identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

§ 2.8. Disclosure of financial plan.

An applicant for a license must disclose with regard to its financial plan the financial projections for the development period and for each of the first five racing years, with separate schedules based upon the number of racing days, types of racing, and types of pari-mutuel wagering the applicant requires to break even and the optimum number of racing days and types of wagering the applicant seeks each year. The commission will utilize financial projections in deciding whether to issue licenses.

Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and approval of types of permissible pari-mutuel pools.

The disclosure must include:

1. The following assumptions and support for them:

a. Average daily attendance;

b. Average daily per capita handle and average bet;

c. Retainage;

d. Admissions to track, including ticket prices and free admissions;

e. Parking volume, fees and revenues;

f. Concessions, gift shop and program sales;

g. Cost of purses;

h. Pari-mutuel expenses;

i. State taxes;

j. Local taxes;

k. Federal taxes;

l. Virginia Breeders Fund;

m. Payroll;

n. Operating supplies and services;

o. Utilities;

p. Repairs and maintenance;

q. Insurance;

r. Travel expenses;

s. Membership expenses;

t. Security expenses;

u. Legal and audit expenses; and

v. Debt service;

2. The following profit and loss elements:

a. Total revenue, including projected revenues from retainage, breakage, uncashed tickets, admissions, parking, and concessions, gift and program operations;

b. Total operating expenses, including anticipated expenses for:

(1) Purses;

(2) Pari-mutuel;

(3) Sales tax;

(4) Local taxes;

(5) Admissions tax;

(6) Virginia Breeders Fund;

(7) Special assessments;

(8) Cost of concession goods, gifts and programs;

(9) Advertising and promotion;

(10) Payroll;

(11) Operating supplies and service;

(12) Maintenance and repairs;

(13) Insurance;

(14) Security;

(15) Legal and audit; and

(16) Federal and state taxes.

c. Nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of method used, and equipment depreciation and identification of method used;

3. Projected cash flow, including assessment of:

a. Income, including equity contributions, debt contributions, interest income and operating revenue; and

b. Disbursements, including land, improvements, equipment, debt service, operating expense and organizational expense.

4. Projected balance sheets as of the end of the development period and of each of the first five racing years setting forth:

a. Current, fixed and other noncurrent assets;

b. Current and long-term liabilities; and

c. Capital accounts.

5. The applicant must also disclose an accountant's review report of the financial projections.

§ 2.9. Disclosure of governmental actions.

An applicant for a license must disclose with regard to actions of government agencies:

1. The street and highway improvements necessary to ensure adequate access to applicant's horse racing facility, and the cost of improvements, status, likelihood of completion and estimated date of completion;

2. The sewer, water and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion and estimated date of completion;

3. The status of any required government approvals

for development, ownership and operation of its horse racing facility:

a. A description of the approval, unit of government, date and documentation;

b. Whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held; and

c. Whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation. In addition, the applicant must summarize its plans to meet these conditions.

4. Whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval and estimated date of approval;

5. Whether an environmental assessment or environmental impact statement of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement; and

6. Whether the applicant is in compliance with all state statutes, local charter provisions, local ordinances, and state and local regulations pertaining to the development, ownership and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance and summarize plans to obtain compliance.

§ 2.10. Disclosure of management.

An applicant for a license must disclose with regard to the development, ownership and operation of its pari-mutuel horse racing facility:

1. A description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions and qualifications for each management position, and a copy of the organization chart;

2. Management personnel to the extent known and with respect to each:

a. Legal name, alias(es) and previous name(s);

b. Current residence and business addresses and telephone numbers;

c. Qualifications and experience in the following areas:

(1) General business;

(2) Marketing, promotion and advertising;

(3) Finance and accounting;

(4) Horse racing;

(5) Pari-mutuel wagering;

(6) Security; and

(7) Human and animal health and safety.

d. Description of the terms and conditions of employment and a copy of each type of agreement;

3. Consultants and other contractors who have provided or will provide management-related services to applicant with respect to each:

a. Full name;

b. Current address and telephone number;

c. Nature of services;

d. Qualifications and experience; and

e. Description of terms and conditions of each contractor's agreement and a copy of the agreement.

4. Memberships of the applicant, management personnel and consultants in horse racing organizations.

5. Description of the applicant's marketing, promotion and advertising plans;

6. A description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will;

7. A description of training of the applicant's personnel; and

8. A description of plans for compliance with all laws pertaining to discrimination, equal employment and affirmative action; policies regarding recruitment, use and advancement of minorities; policies with respect to minority contracting; and a copy of Equal Employment Opportunity Statement.

§ 2.11. Disclosure of safety and security plans.

An application for a license must disclose with regard to the development of its horse racing facility:

1. A description of the local emergency services available to the horse racing facility, including fire fighting, law enforcement and medical emergency services;

2. A description of the security equipment, such as fences, locks, alarms and monitoring equipment, for the horse racing facility, including:

a. Perimeter fence and its construction;

b. Stables;

c. Paddock;

d. Cash room and the vault;

e. Pari-mutuel ticket windows;

f. Totalizator room;

g. Post-race detention barn; and

h. Parking lot.

3. A description of the security procedures to be used:

a. To admit individuals to restricted areas of the horse racing facility;

b. To secure areas where money and mutuel tickets are vaulted, and daily transfers of cash via armored trucks;

c. To provide security for patrons and employees; and

d. Specific plans to discover persons at the facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Virginia.

4. A description of the security personnel to be employed at the facility, giving:

a. Whether personnel will be employees of the licensee or employees of an independent contractor;

b. If the personnel are employed by an independent contractor, describe the organization and qualifications of the contractor as well as meeting applicable state licensing requirements;

c. State the number of individuals to be employed and the area of the racetrack where each will serve;

d. Provide an organizational chart of the security force with a job description of each level; and

e. State whether or not the security personnel are bonded and if so, state amount and conditions of the bond and the name and address of the surety company that issued the bond.

5. A description of the fire safety and emergency procedures, giving:

a. Evacuating the patrons and controlling traffic in an emergency;

b. Inspecting the facility for fire and safety hazards;

c. Restricted smoking areas; and

d. Coordinating the facility's security, fire and safety procedures with the state police, the commission and other local agencies.

6. A description of the first aid facilities available at the horse racing facility during racing hours and the facilities available to employees during nonracing hours;

7. Whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization; and

8. A description of the internal accounting controls to create cross checks and balances in order to safeguard assets and detect fraud and embezzlement.

§ 2.12. Disclosure of public service.

An applicant for a license must disclose its plans for promotion of the orderly growth of horse racing in Virginia and education of the public with respect to horse racing and pari-mutuel wagering.

§ 2.13. Disclosure of impact of facilities.

An applicant for a license must disclose and document the projected impact of its horse racing facility, including:

1. Economic impact, giving:

a. Number of jobs created, whether permanent or temporary, type of work, compensation, employer and how created;

b. Purchases of goods and services, types of purchases and projected expenditures;

c. Public and private investment; and

d. State and local tax revenues generated.

2. Environmental impact;

3. Impact on energy conservation and development of alternative energy sources; and

4. Social impact on the community in which the horse racing facility would be located.

§ 2.14. Effects on competition.

An applicant must disclose the anticipated short- and long-range effects of its ownership and operation of its horse racing facility on competition within the horse racing industry.

§ 2.15. Disclosure of assistance in preparation of application.

An applicant must disclose the names, addresses and telephone numbers of individuals and businesses who assisted the applicant in the writing of its application and supply copies of all studies completed for the applicant.

§ 2.16. Personal information and authorization for release.

In an application for a license, the applicant shall include the following with respect to each individual identified as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to subdivisions 2 and 3 of § 2.10:

1. Full name, business and residence addresses and telephone numbers, residence addresses for past five years, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references; and

2. An authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he:

a. Authorizes a review by, and full disclosure to, an agent of the Virginia State Police, of all records concerning the individual;

b. Recognizes the information reviewed or disclosed may be used by the Commonwealth of Virginia, its employees, the commission, members, staff and agents to determine the signer's qualifications for a license; and

c. Releases authorized providers and users of the information from any liability under state or federal data privacy statutes.

§ 2.17. License criteria.

A. The commission may issue a license if it determines on the basis of all the facts before it that:

1. The applicant is financially able to operate a racetrack;

2. Issuance of a license will not adversely affect competition within the horse racing industry and the public interest;

3. The racetrack will be operated in accordance with all applicable state and federal statutes and regulations, regulations of the commission and all local ordinances; and

4. The issuance of the license will not adversely affect the public health, safety and welfare.

B. In making the required determinations, the commission must consider the following factors:

1. The integrity of the applicant, including:

a. Criminal record;

b. Involvement in litigation over business practices;

c. Involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

d. Involvement in proceedings in which unfair labor practices, discrimination or government regulation of horse racing or gambling was an issue;

e. Involvement in bankruptcy proceedings;

f. Failure to satisfy judgments, orders or decrees;

g. Delinquency in filing of tax reports or remitting taxes; and

h. Any other factors related to integrity which the commission deems crucial to its decision making, as long as the same factors are considered with regard to all applicants.

2. The types and variety of pari-mutuel horse racing, pari-mutuel wagering, and other uses of the facility when racing or wagering is not offered;

3. The quality of physical improvements and equipment in applicant's facility, including:

a. Racetrack or tracks and provisions, if any, for a turf course;

b. Stabling, including fire control measures;

c. Grandstand;

d. Detention barn;

e. Paddock;

f. Jockeys', drivers' and backstretch employees' quarters;

g. Pari-mutuel totalizator;

h. Parking;

i. Access by road and public transportation;

j. Perimeter fence;

k. Other security improvements and equipment;

l. Starting, timing, photo finish and photo-patrol or video equipment;

m. Commission work areas; and

n. Any other factors related to quality which the commission deems crucial to its decision making, as long as the same factors are considered with regard to all applicants;

4. Imminence of completion of facility and commencement of pari-mutuel horse racing;

5. Financial ability to develop, own and operate a pari-mutuel horse racing facility successfully, including:

a. Ownership and control structure;

b. Amounts and reliability of development costs;

c. Certainty of site acquisition or lease;

d. Current financial condition;

e. Sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;

f. Provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;

g. Feasibility of financial plan; and

h. Any other factors related to financial ability which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.

6. Status of governmental actions required for the applicant's facility, including:

a. Necessary road improvements;

b. Necessary public utility improvements;

c. Required governmental approvals for development, ownership and operation of the facility;

d. Acceptance of any required environmental assessment and preparation of any required environmental impact statement; and

e. Any other factors related to status of governmental actions which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.

7. Management ability of the applicant, including:

a. Qualifications of managers, consultants and other contractors to develop, own and operate a pari-mutuel horse racing facility;

b. Security plan;

c. Plans for human and animal health and safety;

d. Marketing, promotion and advertising plans;

e. Concessions plan;

f. Plan for training personnel;

g. Equal employment and affirmative action plans; and

h. Any other factors related to management ability which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.

8. Compliance with applicable statutes, charters, ordinances or regulations;

9. Efforts to promote orderly growth of horse racing in Virginia and educate public with respect to horse racing and pari-mutuel wagering;

10. Impact of facility, including:

a. Economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;

b. Environmental impact;

c. Impact on energy conservation and development of alternative energy sources;

d. Social impact;

e. Costs of public improvements;

f. Impact on the highway network; and

g. Any other factors related to impact which the commission deems crucial to its decision making as long as the same factors are considered with regard to all applicants.

11. Extent of public support and opposition;

12. Effects on competition, including:

a. Number, nature and relative location of other

licenses;

b. Minimum and optimum number of racing days sought by the applicant; and

c. Any other factors of the impact of competition which the commission deems crucial to decision making as long as the same factors are considered with regard to all applicants.

13. The commission shall also consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

§ 2.18. Criteria for unlimited horse racing facilities.

A. Generally.

Every license to conduct a horse race meeting with pari-mutuel wagering privileges, of 15 days or more in any calendar year is granted by the commission upon the condition that the licensee will conduct horse racing at its facility or meeting for the promotion, sustenance, and growth of a native industry in a manner consistent with the health, safety, and welfare of the people. The adequacy and sufficiency with which the licensee meets the criteria for the procedures, facilities, and equipment for conducting a horse race meeting of such duration shall rest with the commission.

1. Each licensee shall accept, observe, and enforce all federal and state laws, regulations of the commission, and local ordinances.

2. Each licensee shall at all time maintain its grounds and facilities so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of the public, employees, other persons whose business requires their attendance, and for the health and safety of the horses there stabled.

3. Each licensee shall honor commission exclusions from the enclosure and eject immediately any person found within the enclosure who has been excluded by the commission and report the ejection to the commission. Whenever any licensee ejects a person from the enclosure, it shall furnish a written notice to the person ejected and shall report the ejection to the commission.

4. No later than 30 days before the first day of any race meeting, each licensee shall submit to the commission the most recent inspection reports issued by governmental authorities regarding the condition of facilities, sanitation, and fire prevention, detection, and suppression.

5. Each licensee shall provide the commission daily attendance reports showing a turnstile count of all persons admitted to the enclosure and the reports shall indicate the daily number of paid admissions, taxed complimentary admissions, and tax exempt admissions.

6. Each licensee shall furnish to the commission within three months of the closing of its fiscal year, three copies of its balance sheet and of its operating statement for the previous fiscal year with comparison to the prior fiscal year, the same duly sworn to by the treasurer of the association, and certified by an independent certified public accountant. The financial report shall be in the form as may be prescribed from time to time by the commission.

7. Each licensee shall maintain a separate bank account to be known as the "horsemen's account," with the amount of purse money statutorily mandated to be deposited in the account within 48 hours of the running of the race. Withdrawals from this account shall at all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded:

a. All portions of purse money shall be made available when the stewards have authorized payment to the earners; and

b. No portion of purse money other than jockey fees shall be deducted by the licensee for itself or for another, unless so requested in writing by the person to whom such purse moneys are payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting such owner's racing at the close of each race meeting.

8. Each licensee shall remit to the commission within five days of the day on which the revenue for pari-mutuel taxes, admission taxes, and breeders' funds were collected. The remittance shall be accomplished by a direct deposit in a financial institution designated by the commission. On those days when the fifth day is a holiday or a weekend day, the payment must be made by the succeeding business day. At the close of each month in which racing is conducted, the licensee must report to the commission all deposits of taxes and breeders' funds for that month.

9. On each day that deposits are made by the licensee, a report must be filed with the commission containing the following recapitulation: total retainage, pari-mutuel tax; state and local admissions taxes; purse moneys; total breakage; and breeders' fund taxes.

10. Each licensee shall provide areas within the enclosure where publications, other informational materials, and tip sheets, may be sold to the public. All persons holding a tip sheet concession at the facility must be licensed by the commission as

vendors.

a. Each handicapper shall post in a conspicuous place the previous day's tip sheet and the outcome of the races. Each handicapper shall deliver one copy of the tip sheet to a commission representative at least one hour before post time.

11. Each licensee shall supervise the practice and procedures of all vendors of food, horse feed, medication, and tack, who are licensed and have access to the stabling area. No licensee by virtue of this regulation shall attempt to control or monopolize proper selling to owners, trainers, or stable employees; nor shall a licensee grant a sole concession to any vendor of feed, racing supplies, or racing services.

12. Each licensee shall provide to the commission copies of all subordinate contracts, in the amount of $15,000 annual gross and above, entered into by the owner, owner-operator, or operator, and such contracts shall be subject to approval of the commission.

B. Facilities for conducting horse racing.

Each licensee shall provide all of the facilities for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, or dishonest practices and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall provide for flat racing a main racing surface of at least one mile in circumference; for flat or jump racing on the turf a racing surface of at least seven-eighths of a mile in circumference; for harness racing a main racing surface of at least five-eighths of a mile in circumference; and for other types of racing a racing surface of generally accepted standards.

2. Each licensee shall provide a safety rail on the inside of each racing surface and such other fencing that is appropriate to safely enclose the racing surface for horses and riders.

3. Each licensee shall provide distance poles marking off the racing surface and the poles shall be painted in the following colors: quarter poles, red and white; eighth poles, green and white; and sixteenth poles, black and white.

4. Each licensee shall provide racing surfaces whose construction, elevation, and surfaces have received scientific approval as safe and humane, adequate and proper equipment to maintain the racing surface, and sufficient trained personnel to properly operate the equipment. Daily records of maintenance shall be open for inspection.

5. Each licensee shall provide stabling in a sufficient amount to conduct a successful horse race meeting. The horses shall be quartered in individual stalls with separate feeding and watering facilities.

6. Each licensee shall provide a stabling area that is maintained in approved sanitary condition with satisfactory drainage, manure, and other refuse kept in separate boxes or containers distant from living quarters, and the boxes or containers promptly and properly removed.

7. Each licensee shall provide a systematic and effective insect control program and programs to eliminate hazards to public health and comfort in the stabling area and throughout the enclosure.

8. Each licensee shall provide satisfactory living quarters for persons employed in the stabling area as well as satisfactory commissary, recreation, and lavatory facilities, and maintain the facilities in a clean and sanitary manner. No employee shall be permitted to sleep in any stall or barn loft.

9. Each licensee shall provide on every racing day satisfactory sanitary toilets and wash rooms, and furnish free drinking water for patrons and persons having business within the enclosure.

10. Each licensee shall provide satisfactory first aid facilities with not less than two beds and attendance of a competent physician and registered nurse during racing hours who will be available to treat both patrons and permittees.

11. Each licensee shall provide a paddock where the horses are assembled prior to the post parade. Each licensee shall provide a public viewing area where patrons may watch the activities in the paddock. Each licensee shall also provide a sufficient number of roofed stalls so that horses may be housed during inclement weather.

12. Each licensee shall provide satisfactory facilities for jockeys or drivers who are participating in the day's program. The facilities shall include accommodations for rest and recreation, showers, toilets, wash basins, arrangements for safe keeping of apparel and personal effects and snack bar during horse race meetings.

13. Each licensee shall maintain an information desk where the public may make complaints regarding the facilities, operations of the licensee, or rulings of the commission. The licensee shall respond promptly to complaints, and inform the commission regarding any alleged violation of its regulations.

14. Each licensee shall maintain a detention barn for use by commission employees in securing from horses which have run a race, samples of urine, saliva, blood, or other bodily substances for chemical analysis. The detention barn shall include a wash

rack, commission veterinarian office, a walking ring, and a sufficient number of stalls each equipped with a window sufficiently large to allow the taking of samples to be witnessed from outside the stall. The detention barn shall be located convenient to the racing surface and shall be enclosed by a fence so that unauthorized persons shall be excluded. Space shall be provided for signing in and signing out of permittees whose attendance is required in the detention barn.

15. Each licensee shall maintain a receiving barn conveniently located for use by horses arriving for races that are not quartered in the stabling area. The licensee shall have a sufficient number of stalls to accommodate the anticipated number of horses, hot and cold running water, and stall bedding. The licensee shall maintain the receiving barn in a clean and sanitary manner.

16. Each licensee shall provide and maintain lights so as to ensure adequate illumination in the stabling area and parking area. Adequacy of track lighting for night racing shall be determined by the commission.

17. Each licensee shall provide and maintain stands commanding an uninterrupted view of the entire racing surface for the stewards with the location to be approved by the commission. The licensee shall provide patrol judge stands so that the floor shall be at least six feet higher than the track rail. For harness racing, each licensee shall provide space in the mobile starting gate which will accompany the horses during the race.

18. Each licensee shall furnish office space, approved by the commission, for the commission's use within the enclosure and an appropriate number of parking spaces so that its members and staff may carry out their duties.

19. Each licensee shall submit to the commission, at least 30 days prior to the opening day of a meeting, a complete list of its racing officials, as set forth elsewhere in these regulations, and department heads. No person shall hold any appointment for a horse race meeting unless approved by the commission after determination that the appointee is qualified for his duties, not prohibited by any law of the Commonwealth of Virginia or regulation of the commission, and eligible to be licensed by the commission.

20. Each licensee shall provide a condition book, or for harness racing, a condition sheet, listing the proposed races for the upcoming racing days and prepared by the racing secretary, to the commission at least one week prior to opening day. Additional condition books or condition sheets shall be provided to the commission as soon as published.

21. No licensee shall allow any person to exercise any horse within the enclosure unless that person is wearing a protective helmet of a type approved by the stewards and the chin strap is buckled. For flat racing, the term "exercising" is defined to include breezing, galloping, or ponying horses.

22. Each licensee shall employ at least two outriders for flat racing, at least four outriders for jump races, and at least one outrider for harness racing, to escort starters to the post and to assist in the returning of all horses to the unsaddling area for flat races. No outrider shall lead any horse that has not demonstrated unruliness, but shall assist in the control of any horse which might cause injury to a jockey or driver or others. During racing hours, outriders will wear traditional attire. For flat race meetings, outriders shall be required to be present on the racing strip, mounted, and ready to assist in the control of any unruly horse or to recapture any loose horse, at all times when the track is open for exercising.

23. Each licensee shall employ for flat meets a sufficient number of valets to attend each jockey on a day's program. Valets will be under the immediate supervision and control of the clerk of scales. No valet shall be assigned to the same jockey for more than two consecutive racing days. Valets shall be responsible for the care and cleaning up of his assigned rider's apparel and equipment; shall ensure his rider has the proper equipment and attend the saddling of his rider's mount; and shall attend the weighing out of his rider. No valet or other jockey room attendant may place a wager for himself or another, directly or indirectly, on races run while he is serving as a valet. Each licensee shall provide uniform attire for valets who shall wear the uniform attire at all times while performing their duties within public view.

C. Equipment for conducting horse racing.

Each licensee shall provide all of the equipment for the conduct of horse racing so as to maintain horse racing of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled practices, and to maintain in horse racing complete honesty and integrity.

1. Each licensee shall maintain at least two operable starting gates for flat meetings and two operable mobile starting gates for harness racing. The licensee shall have in attendance one or more persons qualified to keep the starting gates in good working order and provide for periodic inspection. For flat meetings, the licensee shall also make at least one starting gate along with adequate personnel available for schooling for two hours each day during training hours, exclusive of nonrace days. For harness racing meetings, a mobile starting gate shall be made available for qualifying races and schooling.

2. Each licensee shall maintain photo-finish equipment to assist the stewards and placing judges, where employed for flat race meetings, in determining the order of finish of each race. The licensee shall provide at the finish line two photo-finish cameras for photographing the finish of races; one camera to be held in reserve. The standards and operations of the photo-finish camera as well as the methodology of the personnel shall be subject to the approval of the stewards:

a. The photo-finish photographer shall promptly furnish the stewards and placing judges prints as they are requested, and the photographer will promptly inform the stewards and placing judges of any malfunction of his equipment;

b. A print of a photo finish where the placing of horse is a half of length or less shall be displayed either by posting copies of the print or video means to the public promptly after the race has been declared "official"; and

c. Each licensee shall be responsible for maintaining a file of photo finishes of all races for one year after the closing of the horse race meeting.

3. Each licensee shall provide color video tape recordings of the running of each race clearly showing the position and actions of the horse and jockeys or drivers at close range. Each licensee shall provide at least three cameras to record panoramic and head-on views of the race. One camera shall be located on the finish line:

a. Promptly after a race has been declared "official," video tape recordings shall be replayed for the benefit of the public. In those races where there was a disqualification, video tapes of the head-on views may also be shown with an explanation by the public address announcer; and

b. The licensee shall safeguard the tapes of all videotapes for one year after the close of the horse race meeting and promptly deliver to the commission copies of videotapes of those races where there has been an objection, inquiry, protest, or disqualification.

4. Each licensee shall provide an electronic timing system. Each licensee shall also provide a qualified person to manually time each race, including splits of each quarter of a mile, in the event of a malfunction of the electronic system.

5. Each licensee shall provide an internal communication system which links the stewards' stand, racing secretary's office, pari-mutuel department, jockeys' or drivers' room, paddock, detention barn, commission veterinarian's office, starting gate, film patrol office, ambulances, public address announcer, patrol judges, and any other personnel designated by the commission.

6. Each licensee shall provide a public address system whereby calls of the races and other pertinent information may be communicated to the public. This system shall be utilized by a qualified person, and the system shall have the capability of transmitting throughout the stabling area.

7. Each licensee shall restrict the use of all external communication devices for a period of time beginning 30 minutes before post time of the first race and ending when the last race is declared "official":

a. The licensee shall render inoperable each telephone or other instrument of communication located in the enclosure, other than those designated for the exclusive use of the commission;

b. The licensee may not permit an individual within the enclosure to receive a telephone call, telegram, or message from outside the enclosure without the approval of the stewards;

c. Each licensee shall confiscate until the end of the restricted time period a portable telephone, transmitter, or other instrument of external communication, including a car phone, located within the enclosure; and

d. The licensee may have telephone or telegraph systems within the enclosure for the benefit of the media, but no information regarding the results shall be transmitted out of the enclosure until the results are official except for races that are broadcast or televised live.

8. Each licensee shall provide a totalizator and employ qualified personnel to operate the system, provide maintenance of the hardware, software, and ancillary wagering devices, and be able to perform emergency repairs in case of emergencies. The licensee shall also provide a mutuel board in the infield where approximate odds, amounts wagered in the win, place, and show pools on each betting interest, and other pertinent information may be prominently displayed to the public: sets of pool totals and compare them at least once every 60 seconds. The totalizator shall record in a system log file any difference in the final pool totals;

b. The totalizator shall have the capability of calculating the mutuel pools, approximate odds, probable payoffs and display them to the public at intervals of not more than 60 seconds;

c. The totalizator shall have the capability of being locked and wagering terminated automatically at the command of a steward. Any failure of the system to lock at the start of the race shall be reported

immediately by the mutuel manager to the stewards;

d. The totalizator shall have the capability of displaying the probable payoffs on various combinations in the daily double, perfecta, and quinella wagering, and displaying the payoffs to the public;

e. The totalizator shall have the capability of recording the wagering by individual wagers, including the amount wagered, the betting interest, and the mutuel window where the wager was placed. The records of the wagering shall be promptly made available to the commission upon request. The licensee shall preserve the records of the wagering for 30 days after closing of the horse race meeting. The records shall not be destroyed without permission of the commission;

f. The personnel operating the totalizator shall report immediately to the stewards any malfunction in the system, or what they perceive to be any unusual patterns in the wagering;

g. The totalizator personnel shall make available to the commission any special reports or requests that may assist the commission in carrying out its statutory duties and responsibilities for the conduct of horse racing; and

h. The commission may require an independent certified audit of the totalizator's software attesting to the accuracy of its calculations and the integrity of its accounting processes.

9. Each licensee shall provide at least one human ambulance and at least one horse ambulance within the enclosure at all times during those hours when the racing and training surface is open for racing and training. The ambulances shall be manned and equipped to render immediate assistance, and shall be stationed at a location approved by the stewards.

D. Provisions for safety, security and fire prevention.

Each licensee shall employ sufficient trained personnel to provide for the safety and security of the public and others who have business within the enclosure. Each licensee shall also take all measures to prevent the outbreak of fires within the enclosure and develop plans for the quick extinguishing of any fires that should occur.

1. Each licensee shall provide sufficient trained security personnel under the supervision of a qualified director of security. If the licensee contracts with a private security service, the security service must be bonded and meet all applicable licensing requirements. If the licensee establishes its own security force, then director of security shall forward to the commission detailed plans for the screening, hiring, and training of its own personnel.

2. The director of security of each licensee shall cooperate fully with the commission and its staff, federal and state law enforcement agencies, local police and fire departments, and industry security services to enforce all laws and regulations to ensure that horse racing in the Commonwealth of Virginia is of the highest integrity.

3. Each licensee shall develop a detailed security plan describing the equipment, i.e., fences, locks, alarms, and monitoring devices; the procedures to admit persons to restricted areas, i.e., stabling area, paddock, jockeys' or drivers' room, vault, mutuel lines, totalizator room, and post-race detention barn; and the trained personnel in sufficient numbers to provide for the safety and security of all persons during racing and nonracing hours.

4. Each licensee may provide a perimeter fence around the entire enclosure, but shall fence off the stabling area. The entrance to the stabling area shall be guarded on a 24-hour basis by uniformed security personnel so that unauthorized persons shall be denied access to the restricted stabling area. The licensee shall also provide for routine patrolling by uniformed security personnel on a 24-hour basis within the stabling area.

5. During racing hours, the licensee shall provide uniformed security personnel to guard the entrances to the paddock, jockeys' or drivers' room, stewards' stand, and other restricted areas as may be deemed appropriate by the commission so that unauthorized persons shall be denied access to them.

6. The licensee's director of security shall submit to the commission and Virginia State Police a written report describing every arrest or completed incident of security investigation or rule violation including the person charged, the charges against the person, the present whereabouts of the person, and disposition of the charges, if any.

7. The licensee's director of security shall submit to the commission a detailed plan describing the procedures to be followed in case of fire or any other emergency within the enclosure. The plan shall contain the resources immediately available within the surrounding communities to cope with fire or other emergencies, route of evacuation for the public, controlling traffic, and those resources available from the surrounding communities for police, fire, ambulance, and rescue services.

8. Each licensee shall observe and enforce all state and local building codes and regulations pertaining to fire prevention, and shall prohibit the following:

a. Smoking in horse stalls, feed rooms, or under the shedrow;

b. Open fires and oil or gasoline burning lanterns or lamps in the stable area;

c. The unsafe use of electrical appliances or other devices which would pose a hazard to structures, horses, permittees, or the public; and

d. Keeping flammable materials including cleaning fluids or solvents in the stabling area.

§ 2.19. Request for racing days.

A. Generally.

A holder of an owner-operator's or operator's license has the privilege of conducting horse race meetings at facilities, licensed by the commission, with pari-mutuel wagering for a period of 20 years, subject to annual review by the commission. A holder of an owner-operator's or operator's license shall submit an annual request to the commission for racing days.

B. Where to file request.

The licensee shall submit the request in writing to the main office of the commission no later than September 1, excluding Saturdays, Sundays, or holidays, for the following calendar year. The commission may, in its discretion, extend the deadline as new horse racing facilities are licensed and completed.

1. A request to be sent by certified mail shall be addressed to:

Executive Secretary
Virginia Racing Commission
Post Office Box 1123
Richmond, VA 23208

2. A request to be hand-delivered shall be delivered to:

Executive Secretary
Virginia Racing Commission
700 East Franklin Street
11th Floor
Richmond, VA 23219

3. A request delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed.

4. Delivery to other than the commission's main office or to commission personnel by hand or by mail is not acceptable.

5. The licensee assumes full responsibility for the method chosen to deliver the request.

C. Content of request.

The licensee's request in writing shall include a statement of how the request will provide for the promotion, sustenance, and growth of a native industry, in a manner consistent with the health, safety and welfare of the people, except that the commission, in its discretion, may waive the foregoing. The request shall include the following:

1. A request, signed by an officer of the licensee, for assignment of racing days;

2. A statement of the precise nature and extent of the assignment requested including the total number of racing days requested, the dates within which the racing days are to be conducted and the dark days, the breed or breeds to be utilized, the type or types of racing to be offered, the horse racing facility where the racing days are to be conducted, the hours of racing, and the projected purse structure.

3. A detailed statement of how the request meets the criteria established in § 2.21 C; and

4. Any other documentation the licensee deems material to ensure a complete understanding of the request.

D. Revision of request.

A licensee may at anytime request a revision of a properly submitted request for racing days for commission approval.

E. Rescission of racing days.

The commission may in its discretion rescind one or more racing days assigned to a licensee, if the commission finds that the licensee has not or will not meet the terms of its license. Any days rescinded may be reassigned to another licensee.

§ 2.20. Owner, owner-operator, or operator unlimited license application fee.

An applicant for an owner's, owner-operator's, or operator's license under § 59.1-375 of the Act must submit a nonrefundable application fee to the commission's designee at the time of application by a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of $10,000 to cover the cost of the background investigations mandated by § 59.1-371 of the Code of Virginia. In the event the cost of the investigation exceeds the $10,000 application fee, the applicant must remit the amount of the difference by certified check or bank draft within 10 days after receipt of a bill from the commission.

§ 2.21. Assignment of racing days.

A. Generally.

The commission shall promptly consider a request for racing days and assign racing days to a licensee.

B. Consideration of requests.

Upon receipt of a request for assignment or revision of racing days, the commission shall consider the request at its next regular meeting, which is scheduled 15 days after receipt of a request, and may, in its discretion, assign the racing days as requested, modify the request, deny the request, or hold a public hearing pursuant to the following procedures.

1. If the commission deems a hearing is appropriate, the commission shall send written notice to the licensee and give due notice of the public hearing. The notice must include a brief description of the request, a statement that persons wishing to participate may do so in writing, the time and place of any public hearing on the request, and the earliest and latest date which the commission may act.

2. The licensee will be afforded the opportunity to make an oral presentation, and the licensee or its representative shall be available to answer inquiries by the commissioners.

3. Any affected parties, including horsemen, breeders, employees of the licensee, representatives of other state and local agencies will be afforded the opportunity to make oral presentations. The public may be afforded the opportunity to make oral presentations and shall be given the opportunity to submit written comments.

4. If, after a request is received, the commission determines that additional information from the licensee is necessary to fully understand the request, the commission shall direct the licensee to submit additional information.

5. If the commission further determines it is necessary for a full understanding of a request, the commission shall request the licensee or a person submitting comments to appear before the commission. The commission shall request the appearance in writing at least five days in advance.

6. If a licensee fails to comply with the foregoing, the commission may deny the request for racing days.

7. A record of the proceedings shall be kept, either by electronic means or by court reporter, and the record shall be maintained until any time limits for any subsequent court appeals have expired.

8. Three or more members of the commission are sufficient to hear the presentations. If the chairman of the commission is not present, the commissioners shall choose one from among them to preside over the hearing.

C. Criteria for assignment of racing days.

The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; public interest, necessity and convenience; as well as the following factors:

1. The integrity of the licensee;

2. The financial resources of the licensee;

3. The ability of the licensee to conduct horse racing, including the licensee's facilities, systems, managers, and personnel;

4. Past compliance of the licensee with statutes, regulations, and orders regarding horse racing with pari-mutuel wagering privileges;

5. The licensee's market, including area, population, and demographics;

6. The performance of the horse race meeting with previously assigned dates;

7. The impact of the assignment of racing days on the economic viability of the horse racing facility including attendance and pari-mutuel handle;

8. The quantity and quality of economic development and employment generated;

9. Commonwealth tax revenues from racing and related economic activity;

10. The entertainment and recreation opportunities for residents of the Commonwealth;

11. The breeds of horse racing;

12. The quality of racing;

13. The availability and quality of horses;

14. The development of horse racing;

15. The quality of the horse racing facility;

16. Security;

17. Purses;

18. Benefits to Virginia breeders and horse owners;

19. Stability in racing dates;

20. Competition among horse racing facilities, other racing days and with other providers of entertainment and recreation as well as its effects;

21. The social effects;

22. The environmental effects;

23. Community and government support;

24. Sentiment of horsemen; and

25. Any other factors related to the assignment of racing days which the commission deems crucial to its decision-making as long as the same factors are considered with regard to all requests.

D. Assigning racing days.

In assigning racing days to a licensee, the commission shall designate in writing the total number of racing days assigned, the dates within which the racing days are to be conducted and dark days, the breed or breeds to be utilized, the type or types of racing to be offered, the horse racing facility where the racing days will be conducted, and the hours of racing.

1. The commission shall approve, deny or give its qualified approval to a request for racing days within 45 days after a public hearing, if a public hearing was held on the request.

2. The commission may, in its discretion, change at the beginning of any calendar year the assignment of racing days previously made.

3. The commission shall require a bond with surety or within the amount of $1 million or a higher amount as the commission may require to cover any indebtedness, including but not limited to purses, awards to horsemen and moneys due the Commonwealth of Virginia, incurred by the licensee.

E. Denial of request final.

The denial of a request by the commission shall be final unless appealed by the licensee under the provisions of these regulations.

§ 2.22. Payment of owner and operator license fee.

An owner's or operator's license becomes effective upon the receipt by the commission of a certified check or bank draft to the order of the Commonwealth of Virginia in the amount of license fees and is suspended if the license fee is not received on or before the specified dates:

1. Owner's license: A nonrefundable fee of $5,000 per year due and payable within 10 days of the original license being issued and on or before January 1 of each succeeding year.

2. Operator's license: A nonrefundable fee of $100 times the number of racing days awarded in the annual application for racing days due and payable on or before January 1 of each year.

§ 2.23. Transfer or acquisition of interest in owner's, owner-operator's or operator's license.

A. Generally.

A licensee already holding a limited or unlimited owner's, owner-operator's or operator's license may apply to the commission to transfer its race meet or meetings to that of another horse racing facility already licensed by the commission.

B. Requirements for transfer of racing days.

The licensee shall apply to the commission in writing requesting the transfer of its racing days to that of another licensee stating:

1. The reason for the transfer;

2. Why the transfer will provide for the promotion, sustenance, and growth of horse racing and breeding, in a manner consistent with the health, safety, and welfare of the Commonwealth of Virginia;

3. Why the transfer will maintain horse racing in the Commonwealth of the highest quality, and free of any corrupt, incompetent, dishonest, or unprincipled practices and maintain complete honesty and integrity;

4. Why the transfer will not adversely affect the operation of any other horse racing facility licensed by the commission;

5. That the transfer has been expressly consented to by the licensee to which the transfer is to be made;

6. That all licensees agree to be bound by the regulations and requirements placed upon it by the commission before the application for the transfer was submitted; and

7. That all licensees to whom racing days are to be transferred, have paid all and any applicable license fees for the conduct of horse racing, with pari-mutuel wagering privileges, at the particular facility or place for holding races on which the racing is to be conducted.

C. Consideration by commission.

The commission will take into account the statement submitted by the licensee and any other testimony or documentation that it deems material before approving or denying the request for transfer of a license. The commission shall act on the application within 60 days of receipt.

D. Acquiring an interest.

Any person desiring to become a partner, member or principal stockholder of any licensee shall apply to th

commission for approval of acquiring an interest in the license.

1. The applicant shall meet all of the requirements imposed by the commission for licensure as owners or operators, as specified in §§ 2.1 through 2.17 of these regulations.

2. The commission shall consider the application and if the commission finds that acquisition would be detrimental to the public interest, to the honesty and integrity or racing, of its reputation, the application shall be denied.

3. The commission shall act on the application within 60 days of receipt.

§ 2.24. ~~Appeals of denial, fine, suspension or revocation of license.~~ *(Repealed).*

~~A. Generally.~~

~~An applicant who is denied a license may appeal the commission's decision by requesting a hearing on the licensing action. A licensee whose license is revoked, whose license is denied for renewal, whose request is denied for transfer, or who is fined or suspended, may appeal the commission's decision by requesting a hearing on the licensing action.~~

~~B. Hearings to conform to Administrative Process Act.~~

~~The conduct of license appeal hearings will conform to the provisions of Article 3 (9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 relating to Case Decisions.~~

~~1. An initial hearing consisting of an informal fact finding process will be conducted by the executive secretary in private to attempt to resolve the issue to the satisfaction of the parties involved.~~

~~2. If an appeal is not resolved through the informal fact finding process, a formal hearing will be conducted by the commission in public. The commission will then issue its decision on the case.~~

~~3. Upon receipt of the commission's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (APA) relating to court review.~~

~~C. Form of appeal.~~

~~Upon receiving a notice that (i) an application for or the renewal of a license has been denied by the commission, or (ii) the commission intends to or has already taken action to fine, suspend, or revoke a current license, the applicant or licensee may appeal in writing for a hearing on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.~~

~~1. Receipt of said notice is presumed to have taken place not later than the third day following mailing of the notice to the last known address of the applicant or licensee. If the third day falls upon a day on which mail is not delivered by the United States Postal Service, the notice is presumed to have been received on the next business day. The "last known address" means the address shown on the application of an applicant or licensee.~~

~~D. Where to file appeal.~~

~~1. An appeal to be sent by certified mail shall be addressed to:~~

~~Executive Secretary~~
~~Virginia Racing Commission~~
~~Post Office Box 1123~~
~~Richmond, Virginia 23208~~

~~2. An appeal to be hand-delivered shall be delivered to:~~

~~Executive Secretary~~
~~Virginia Racing Commission~~
~~700 East Franklin Street~~
~~11th Floor~~
~~Richmond, Virginia 23219~~

~~3. An appeal delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed.~~

~~4. Delivery to other Virginia Racing Commission offices or other commission personnel or officials by hand or by mail is not effective.~~

~~5. The appellant assumes full responsibility for the method chosen to file the notice of appeal.~~

~~E. Content of appeal.~~

~~The appeal shall state:~~

~~1. The decision of the commission which is being appealed;~~

~~2. The basis for the appeal; and~~

~~3. Any additional information the appellant may wish to include concerning the appeal.~~

~~F. Procedures for conducting informal fact finding hearings.~~

~~The executive secretary will conduct an informal fact finding hearing with the appellant for the purpose of resolving the licensing action at issue.~~

~~1. The executive secretary will hold the hearing as~~

soon as possible but not later than 30 days after the appeal is filed. A notice setting out the hearing date, time and location will be sent to the appellant at least 10 days before the day set for the hearing.

2. All informal hearings shall be held at the main office of the Virginia Racing Commission.

3. The hearings shall be informal. They shall not be open to the public.

a. The hearings may be electronically recorded. The recordings will be kept until any time limits for any subsequent appeals have expired.

b. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.

c. The appellant may appear in person or may be represented by counsel to present his facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

d. The commission will present its facts in the case and may request other parties to appear to present testimony.

e. Questions may be asked by any of the parties at any time during the presentation of information subject to the executive secretary's prerogative to regulate the order of presentation in a manner which serves the interest of fairly developing the factual background of the appeal.

f. The executive secretary may exclude information at any time which he believes is not germane or which repeats information received.

g. The executive secretary shall declare the hearing completed when both parties have finished presenting their information.

h. Normally, the executive secretary shall issue his decision within 15 days after the conclusion of an informal hearing. However, for a hearing with a court reporter, the executive secretary shall issue his decision within 15 days after receipt of the transcript of the hearing. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

G. Appeal to commission for hearing.

After receiving the executive secretary's decision on the informal hearing, the appellant may elect to appeal to the commission for a formal hearing on the licensing action. The appeal shall be:

1. Submitted in writing within 15 days of receipt of the executive secretary's decision on the informal hearing;

a. An appeal sent by certified mail shall be addressed to:

Executive Secretary
Virginia Racing Commission
Post Office Box 1123
Richmond, VA 23208

b. An appeal to be hand-delivered shall be delivered to:

Executive Secretary
Virginia Racing Commission
700 East Franklin Street
11th Floor
Richmond, VA 23219

2. The same procedures in § 2.24 D, for filing the original notice appeal govern the filing of the notice of appeal of the executive secretary's decision to the commission.

3. The appeal shall state:

a. The decision of the executive secretary which is being appealed;

b. The basis for the appeal; and

c. Any additional information the appellant may wish to include concerning the appeal.

H. Procedures for conducting formal licensing hearings.

The commission shall conduct a formal hearing within 45 days of receipt of an appeal on a licensing action.

1. Three or more members of the commission are sufficient to hear an appeal. If the chairman of the commission is not present, the members present shall choose one from among them to preside over the hearing.

2. The chairman of the commission, at his discretion, may designate an ad hoc committee of the commission to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the commission. If the chairman of the commission is not present, the members of the ad hoc committee shall choose one from among them to preside over the hearing.

3. If any commissioner determines that he has a conflict of interest or potential conflict, that commission member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the commission chairman shall appoint an ad hoc substitute for the hearing.

4. A notice setting the hearing date, time, and location shall be sent to the appellant at least 10 days before the day set for the hearing. All hearings will be held at the main office of the Virginia Racing Commission, unless the commission decides otherwise.

5. The hearings shall be conducted in accordance with provisions of the Virginia Administrative Process Act (APA). The hearings shall be open to the public.

a. The hearings shall be electronically recorded and the recordings will be kept until any time limits for any subsequent court appeals have expired.

b. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the commission. The transcript shall become part of the commission's records.

c. The provisions of §§ 9-6.14:12 through 9-6.14:14 of the Administrative Process Act (APA) shall apply with respect to the rights and responsibilities of the appellant and of the commission.

I. Decision by commission.

Normally, the commission will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the commission will issue its written decision within 21 days of receipt of the transcript of the hearing.

1. A copy of the commission's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained by the commission and become a part of the case file.

2. The written decision will contain:

a. A statement of the facts to be called, "Finding of Facts";

b. A statement of conclusions to be called "conclusions" and to include as much detail as the commission feels is necessary to set out the reasons and basis for its decisions; and

c. A statement, to be called "Decision and Order," which sets out the commission's decision and order in the case.

PART III.
PARI-MUTUEL WAGERING.

§ 3.1. Generally.

All permitted wagering shall be under a pari-mutuel wagering system whereby the holders of winning tickets divide the total amount wagered, less retainage, in proportion to the sums they have wagered individually. All other systems of wagering other than pari-mutuel, e.g., bookmaking and auction-pool selling, are prohibited and any person participating or attempting to participate in prohibited wagering shall be excluded from the enclosure.

A. Persons under the age of 18 are prohibited from wagering.

No person under the age of 18 shall be permitted by any licensee to purchase or cash a pari-mutuel ticket. No employee of the licensee shall knowingly sell or cash any pari-mutuel ticket for a person under the age of 18.

B. Posted order of finish.

Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as posted on the infield results board and declared "official" by the stewards. Any subsequent change in the order of finish or award of purse money as may result from a ruling by the stewards or commission shall in no way affect the pari-mutuel payout.

Payments will be made only on the first three horses passing the finish line according to the official order of finish, except in the case of a dead heat for show, in which case payments will be made on the horses involved in the dead heat.

C. Errors in payment.

The licensee shall be responsible for the correctness of all payouts posted as "official" on the infield results board. If an error is made in posting the payout figures on the infield results board, and discovered before any tickets are cashed, the error may be corrected accompanied by a public address announcement, and only the correct amounts shall be used in the payout, irrespective of the initial error on the infield results board.

1. The licensee shall compare the two independent final pool totals and payouts calculated by the totalizator prior to posting them on the infield results board. In the event of a discrepancy between the two sets of pool totals and payouts and the inability of the totalizator to determine which of the sets is correct, the highest pool total and payouts shall be used.

2. If an error is made in posting the payout figures on the infield results board and discovered after tickets have been cashed, where the public is underpaid, the amount of the underpayment shall be added to the

same pool immediately following. Where the public is overpaid, the amount of the overpayment shall be absorbed by the licensee.

3. If any underpayment is discovered after the close of the horse race meeting or an opportunity does not exist to add the amount of the underpayment to the same pool, the total underpayment shall be paid to the Commonwealth of Virginia in a manner prescribed by the commission.

D. Minimum wagers.

The minimum wager for straight wagering shall be $2.00. The minimum wager for multiple wagering shall be $1.00.

E. Minimum payouts.

The licensee shall pay to the holder of any ticket entitling the holder to participate in the distribution of a pari-mutuel pool the amount wagered by the holder plus a minimum profit of 5.0%. If such a payout creates a deficiency in the pari-mutuel pool, the licensee shall make up the deficiency from its share of the pari-mutuel wagering.

The licensee, with the approval of the stewards, may bar wagering on a horse or entry in any or all pari-mutuel pools in a stakes race, handicap, futurity or other special event where the licensee has good and sufficient reason to believe that accepting wagers on the horse or entry may result in a deficiency or minus pool. The decision to bar wagering on a horse or entry shall be announced publicly before wagers are accepted on that race.

F. Posting of regulations.

Part III of these regulations shall be posted for the benefit of the public in not less than two places in the wagering areas of the enclosure and a general explanation shall be printed in the daily program.

The pari-mutuel regulations posted in the wagering areas or a general explanation printed in the daily program shall be preceded by the following statement:

"All payouts by the pari-mutuel departments of horse race meetings licensed by the Virginia Racing Commission are subject to the regulations of the United States Government, the Internal Revenue Service, and applicable statutes of the Commonwealth of Virginia."

G. Identification of holder.

The licensee shall require positive identification of a holder of a valid winning pari-mutuel ticket before the payment when, in the stewards' discretion, circumstances warrant this action.

§ 3.2. Request for types of pari-mutuel pools.

A. Generally.

Each licensee shall submit a request in writing to the commission for approval of the types of pari-mutuel wagering pools that are to be offered to the public during the horse race meeting. The request for approval of types of pari-mutuel wagering pools shall be submitted to the commission in writing no less than 90 days before the scheduled opening day of the horse race meeting.

B. Where to file request.

The licensee shall submit the request in writing to the main office of the commission.

1. A request to be sent by certified mail shall be addressed to:

Executive Secretary
Virginia Racing Commission
Post Office Box 1123
Richmond, VA 23208

2. A request to be hand-delivered shall be delivered to:

Executive Secretary
Virginia Racing Commission
700 East Franklin Street
11th Floor
Richmond, VA 23219

3. A request delivered by hand or by certified mail will be timely only if received at the main office of the commission by 5 p.m. on or before the date prescribed.

4. Delivery to other than the commission's main office or to commission personnel by hand or by mail is not acceptable.

5. The licensee assumes full responsibility for the method chosen to deliver the request.

C. Content of request.

The licensee's request in writing shall include a statement of how the request will provide for the promotion, sustenance and growth of a native industry, in a manner consistent with the health, safety and welfare of the people, except that the commission, in its discretion, may waive the foregoing. The request shall include the following:

1. A signed request for approval of pari-mutuel pools;

2. A statement of the precise nature and extent of pools requested, specifying the type of pari-mutuel wagering pools and their placement in the program;

3. A detailed statement of how the request meets each of the criteria in subsection C of § 3.3; and

4. Any other documentation the licensee deems necessary to ensure a complete understanding of the request.

D. Revision of request.

A licensee may make a revision of a properly submitted request for types of pari-mutuel wagering pools.

§ 3.3. Approval of types of pari-mutuel wagering pools.

A. Generally.

The commission shall promptly consider a request for types of pari-mutuel wagering pools.

B. Consideration of requests.

Upon receipt of a request for approval or modification of types of pari-mutuel wagering pools, the commission shall consider the request at its next regularly scheduled meeting, and may, in its discretion, approve the types of pari-mutuel wagering pools as requested, modify the request, deny the request, or hold a public hearing pursuant to the following procedures:

1. If the commission deems a public hearing is appropriate, the commission shall send written notice of the request to all persons interested in participating in the public hearing. The notice must include a brief description of the request, a statement that persons wishing to comment may do so in writing, the time, and place of any public hearing on the request, and the earliest and latest date which the commission may act.

2. The licensee will be afforded the opportunity to make an oral presentation, and the licensee or its representative shall be available to answer inquiries by the commissioners.

3. Any affected parties, including horsemen, breeders, employees of the licensee, representatives of other state and local agencies, and the public will be afforded the opportunity to make oral presentations.

4. If, after a request is received, the commission determines that additional information from the licensee is necessary to fully understand the request, the commission shall direct the applicant to submit the additional information.

5. If the commission further determines it is necessary for a full understanding of a request, the commission shall request the licensee or a person submitting comments to appear before the commission. The commission shall request the appearance in writing at least five days in advance.

6. If a licensee fails to comply with the foregoing, the commission may deny the request for the types of pari-mutuel wagering pools.

7. A record of the proceedings shall be kept, either by electronic means or by court reporter, and the record shall be maintained until any time limits for any subsequent court appeals have expired.

8. Three or more members of the commission are sufficient to hear the presentations. If the chairman of the commission is not present, the commissioners shall choose one from among them to preside over the meeting.

C. Criteria for approval of types of pari-mutuel wagering pools.

The commission, in making its determination, must consider the success and integrity of horse racing; the public health and safety, and welfare; public interest, necessity, and convenience; as well as the following factors:

1. The integrity of the licensee;

2. The financial strength of the licensee;

3. The ability of the licensee to operate a racetrack and conduct horse racing, including the licensee's facilities, systems, policymakers, managers, and personnel;

4. Past compliance of the licensee with statutes, regulations, and orders regarding pari-mutuel horse racing;

5. The licensee's market, including area, population, and demographics;

6. The performance of the horse racing facility with previously approved pari-mutuel pools;

7. The impact approving the pari-mutuel pool will have on the economic viability of the horse race meeting, including attendance and handle;

8. The quantity and quality of economic activity and employment generated;

9. Commonwealth of Virginia tax revenues from racing and related economic activity;

10. The entertainment and recreational opportunities for Virginia citizens;

11. The variety of racing;

12. The quality of racing;

13. The availability and quality of horses;

14. The development of horse racing;

15. The quality of the horse racing facility;

16. Security;

17. Purses;

18. Benefits to Virginia breeders and horse owners;

19. Competition among licensees and with other providers of entertainment and recreation as well as its effects;

20. Social effects;

21. Community and government support;

22. Sentiment of horsemen; and

23. Any factors related to the types of pari-mutuel wagering pools which the commission deems crucial to its decision-making as long as the same factors are considered with regard to all horse race meetings.

D. Approving types of parti-mutuel pools.

The commission shall approve, deny or give its qualified approval to a request for types of pari-mutuel wagering pools within 45 days after a public hearing, if a public hearing is held.

E. Denial of request final.

The denial of a request by the commission shall be final unless appealed by the licensee under the provisions of these regulations.

§ 3.4. Pari-mutuel tickets.

A. Generally.

A valid pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool operated by the licensee and is evidence of the obligation of the licensee to pay to the holder the portion of the distributable amount of the pari-mutuel pool as is represented by the ticket. The licensee shall cash all valid unmutilated winning tickets when they are presented for payment within 60 days of the date of their purchase.

B. Valid pari-mutuel tickets.

To be deemed a valid pari-mutuel ticket, the ticket must have been issued by a pari-mutuel ticket machine operated by the licensee and recorded as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as to:

1. The name of the horse racing facility;

2. The date of the wagering transaction;

3. A unique identifying number or code;

4. The race number for which the pool is conducted;

5. The type or types of wager or wagers represented;

6. The number or numbers representing the wagering interests for which the wager is recorded; and

7. The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence.

C. Incorrect ticket issuance.

Any claim by a person that he has been issued a ticket other than that which he requested, must be made before the person leaves the window and before the totalizator is locked.

E. Invalid claims.

After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to make a claim for an incorrect ticket or claim refund or payment for tickets discarded, lost or destroyed or mutilated beyond identification.

F. Identification of tickets.

The responsibility for identifying valid pari-mutuel tickets rests with the licensee.

G. Limits on cashing tickets.

Payment on valid pari-mutuel tickets, including tickets where refunds are ordered, shall be made only upon presentation and surrender of valid pari-mutuel tickets to the licensee within 60 days after the purchase of the ticket. Failure to present any valid pari-mutuel ticket to the licensee within 60 days after the purchase of the ticket shall constitute a waiver of the right to payment.

§ 3.5. Operations of the mutuel department.

A. Generally.

Each licensee shall strive to keep the daily program of racing progressing as expeditiously as possible with due regard for the health, safety, and comfort of the public and participants. The licensee shall provide a sufficient number of mutuel windows and clerks so that the public will be conveniently accommodated.

B. Post time.

Post time for the first race on each racing day shall be approved by the commission upon written request by the licensee. Post time for subsequent races on the sam

program shall be fixed by the mutuel manager.

1. Where heat racing is utilized in harness racing, the time between separate heats of a single race shall not be less than 40 minutes.

C. Termination of wagering.

The pari-mutuel machines shall be locked by a steward immediately upon the start of the race through an electrical control in the stewards' stand or before the start of a race through a method subject to the approval of the commission.

D. Unwarranted delays.

If the start of the race is delayed two minutes or more beyond the official post time, as shown on the infield results board, for no good reason, the stewards may, in their discretion, lock the ticket-issuing machines.

E. Commencement of wagering.

Mutuel windows shall open no less than 30 minutes before the first race. Cashing of tickets shall begin, and selling shall resume, as soon as possible after the official results of a race have been posted on the infield results board.

F. Interruptions of wagering.

If, for any reason, including a malfunction of the totalizator, the ticket-issuing machines are locked during the wagering on a race before the start, they shall remain locked until after the race. Wagering shall cease on that race, and the payout for that race shall be computed on the sums then wagered in each pool. However, in the event the ticket-issuing machines are inadvertently locked through some human error or mechanical problem, the ticket-issuing machines shall be reopened only on the approval of the stewards, if the system balances when it is again operational.

G. Conclusion of wagering.

No pari-mutuel tickets may be sold after the totalizator has been locked, and the licensee shall not be responsible for pari-mutuel ticket sales entered into but not completed by issuance of a ticket before the totalizator has been locked.

H. Designated windows.

No pari-mutuel tickets shall be sold except by the licensee, and pari-mutuel tickets shall only be sold at regular windows properly designated by signs and freestanding self-service ticket issuing machines.

I. Compliance with tax regulations.

All payouts on winning tickets shall be subject to withholding of federal and state taxes when the amount of the payout exceeds the dollar threshold set by the U.S. Internal Revenue Service. In those cases where the payouts require identification and deduction of withholding taxes prior to cashing pari-mutuel tickets to holders, the licensee shall comply with the applicable regulations of the Internal Revenue Service and the statutes of the Commonwealth of Virginia requiring identification and deduction of withholding taxes.

J. Emergency situations.

If any emergency arises in connection with the operation of the mutuel department and the emergency is not covered by these regulations and an immediate decision is necessary, the mutuel manager shall make the decision, and make a prompt report of the facts to the stewards and the commission.

§ 3.6. Wagering interests.

A. Generally.

The licensee shall be responsible for the coupling of horses for wagering purposes in accordance with these regulations and shall provide wagering opportunities in accordance with the success and integrity of horse racing as well as the public interest.

B. Coupled entries.

When two or more horses run in a race and are coupled for wagering purposes, a wager on one of the horses shall be a wager on all of them. The horses so coupled are called "an entry."

C. Mutuel field.

When the individual horses competing in a race exceed the numbering capacity of the infield results board, the highest numbered horses within the capacity of the infield results board and all horses of a higher number shall be grouped together and called the "mutuel field," and a wager on one of them shall be a wager on all of them.

D. Straight wagering opportunities.

Unless the commission approves a prior written request from a licensee to alter wagering opportunities for a specific race, the licensee shall offer:

1. Win, place, and show wagering on all scheduled races that include six or more wagering interests;

2. If horses representing five or fewer wagering interests are scheduled to start in a race, then the licensee may prohibit show wagering on that race; and

3. If horses representing four or fewer wagering interests are scheduled to start in a race, then the licensee may prohibit place wagering as well as show

wagering.

E. Trifecta wagering opportunities.

Trifecta wagering shall not be scheduled on a race unless at least six wagering interests are programmed. In the event of a horse being excused by the stewards, trifecta wagering on a race in which five wagering interests remain is permissible. However, there shall be no trifecta wagering on any race with less than five wagering interests.

F. Perfecta or quinella wagering opportunities.

Perfecta or quinella wagering shall not be scheduled on a race unless at least five wagering interests are programmed. In the event of a horse being excused by the stewards, perfecta or quinella wagering on a race in which four wagering interests remain is permissible, if perfecta or quinella wagering on the race had begun before the stewards excused the horse. There shall be no perfecta or quinella wagering on any race with less than four wagering interests.

G. Extraordinary circumstances.

In extraordinary circumstances, discretion is vested in the stewards to cancel any trifecta, perfecta, quinella, or any other multiple wager pool, and assign multiple wagering pools to other races when the stewards believe it would best maintain in horse racing complete honesty and integrity.

H. Stake races and special events.

In the case of stake races, handicaps, futurities, and other special events, the licensee may offer any straight and multiple wagering pools regardless of the number of wagering interest upon submission of a request in writing to the commission and approval from the commission.

§ 3.7. Straight wagering.

A. Generally.

Win, place, and show pari-mutuel wagering pools shall be considered "straight wagering." In any race, the win, place, and show pools are treated separately, and the distribution of the profits are calculated independently of each other. The "net pool" to be distributed as profit shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere in these rules.

B. Win pools.

The amount wagered to win on the horse or wagering interest which finished first is deducted from the net pool and the balance which remains is profit. The profit is divided by the amount wagered on the horse or wagering interest finishing first, this quotient being the profit per dollar wagered to win. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to win pools:

1. If there is a dead heat for first involving two horses of two different wagering interests, the net win pool shall be distributed as if it were a place pool. If the dead heat involves horses of three wagering interests, the net win pool is distributed as if it were a show pool; and

2. If no win ticket is sold on the horse which finishes first, then the net win pool is distributed to the holders of win tickets on the horse or wagering interest finishing second. If no such ticket is sold, then the licensee shall make a prompt refund.

C. Place pools.

The amounts wagered to place on the first two horses to finish are deducted from the net place pool and the balance which remains is profit. The profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, this quotient being the profit per dollar wagered to place on the first finisher; and one-half of the profit is divided by the amount wagered to place on the second finisher, this quotient being the profit per dollar wagered to place on the second finisher. The return to the holder includes the amount wagered and the profit.

1. If there is a dead heat for first between horses representing the same wagering interest, the net place pool is distributed as if it were a win pool. If the dead heat is between horses representing two different wagering interests, the place pool is distributed as if one wagering interest finished first and the other finished second. If the dead heat is among horses representing three different wagering interests, the net place pool is distributed as if it were a show pool.

2. If there is a dead heat for second between horses representing the same wagering interest, the net place pool is distributed as if no dead heat occurred. If the dead heat for second is between horses representing two or more wagering interests, the net place pool is divided in half, with one-half allocated to the horse finishing first and the other one-half divided equally so as to allocate one-fourth of the net place pool for wagers to place on each of the two horses finishing in a dead heat for second, or one-sixth of the net place pool for wagers to place on each of three horses finishing in a dead heat for second.

3. If the first and second finishers comprise a single wagering interest, the net place pool is distributed as if it were a win pool.

4. If no place ticket is sold on a horse which finishes first or second, then the horse which finished third shall replace that horse in the distribution of wagers in the net place pool. If no such ticket is sold, ther

the licensee shall make a prompt refund.

D. Show pools.

The amounts wagered to show on the first three horses to finish are deducted from the net pool to determine the profit. The profit is divided into three equal amounts. One-third of the net show pool is divided by the amount wagered to show on the first finisher, the quotient being the profit per dollar wagered to show on the first finisher; one-third of the net show pool is divided by the amount wagered to show on the second finisher, the quotient being the profit per dollar wagered to show on the second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, the quotient being the profit per dollar wagered to show on the third finisher. The return to the holder includes the amount wagered and the profit.

1. If there is a dead heat for first between two horses involving different wagering interests, or three horses involving three different wagering interests, the show pool is distributed as if no dead heat occurred. If the dead heat for first is between two horses including the same wagering interest, two-thirds of the profit is allocated to wagers to show on the coupled wagering interest and one-third of the profit is allocated to wagers to show on the other horse among the first three finishers. If the dead heat for first is among three horses including one wagering interest, the show pool is distributed as if it were a win pool.

2. If there is a dead heat for second between two horses including different wagering interests, the show pool is distributed as if no dead heat occurred. If the dead heat for second is between horses including the same wagering interest, two-thirds of the net show pool shall be allocated to wagers to show on the coupled wagering interest and one-third of the profit shall be allocated to wagers to show on the horse finishing first. If the dead heat for second is among three horses involving two or three wagering interests, one-third of the net show pool is allocated to wagers to show on the horse finishing first and the remaining two-thirds of the net show pool is divided equally by the number of wagering interests finishing in a dead heat for second for proportionate distribution on wagers to show for each wagering interest finishing in a dead heat for second.

3. If there is a dead heat for third between horses involving the same wagering interests, the net show pool is distributed as if no dead heat occurred. If the dead heat for third is among horses involving two or more wagering interests, two-thirds of the net show pool shall be allocated to wagers to show on the first two finishers and the remaining one-third of the net show pool is divided equally by the number of wagering interests finishing in a dead heat for third for proportionate distribution on wagers to show for each wagering interest finishing in a dead heat for third.

4. If the first three horses to finish comprise one wagering interest, the net show pool shall be distributed as if it were a win pool. If two horses coupled as a single wagering interest finish first and second, or first and third, or second and third, two-thirds of the net show pool shall be allocated to wagers to show on the single wagering interest and one-third of the net show pool shall be allocated to wagers on the other horse among the first three finishers.

5. In the event one horse coupled in the wagering by reason of being in the mutuel field or part of a mutuel entry finishes first or second and another horse included in the same wagering interest finishes in a dead heat for third, the allocation of the net show pool shall be:

a. One-half of the net show pool shall be allocated to the wagers on the field or entry, one-third of the net show pool shall be allocated to the horse finishing first or second, and one-sixth of the net show pool allocated for the horse finishing in a dead heat for third. The remaining one-sixth of the net show pool shall be allocated to wagers on the horse, which was not a part of the mutuel field or entry, finishing in a dead heat for third.

6. In the event only two horses finish, the net show pool, if any, shall be distributed as if it were a place pool. If only one horse finishes, the net show and place pools, if any, shall be distributed as if it were a win pool.

7. If, in the event no show ticket is sold on a horse which finishes first, or second, or third, then, the horse which finished fourth shall replace that horse in the distribution of wagers in the show pool. If no such ticket is sold, then the licensee shall make a prompt refund.

§ 3.8. Multiple wagering.

A. Generally.

Daily double, quinella, perfecta, trifecta, pick three, and pick six pari-mutuel wagering pools shall be considered "multiple wagering." In any race or races, the daily double, quinella, perfecta, trifecta, pick three, and pick six pools are treated separately and the distribution of the pools are calculated independently of each other. The "net pool" to be distributed shall be all sums wagered in the pool, less retainage and breakage, as defined elsewhere.

B. Daily double pools.

The daily double wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first in the two races specified as the daily double. If either of the

selections fails to win, the pari-mutuel ticket is void, except as otherwise provided. The amount wagered on the winning combination, the horse or wagering interest which finishes first in the first race coupled with the horse or wagering interest finishing first in the second race of the daily double, is deducted from the net pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning daily double. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to daily double pools:

1. If there is a dead heat for first including two different wagering interests in one of the two daily double races, the daily double pool is distributed as if it were a place pool, with one-half of the net pool allocated to wagers combining the single winner of one daily double race and one of the wagering interests involved in the dead heat in the other daily double race, and with the other one-half of the net pool allocated to the wagers combining the single winner of one daily double race and the other wagering interest involved in the dead heat in the other daily double race.

2. If there are dead heats for first involving different wagering interests in each of the daily double races which result in winning combinations, the net pool shall be allocated equally to the winning combinations after first deducting from the net pool the amount wagered on all winning combinations for proportionate allocation to the winning daily double combinations.

3. If no daily double ticket is sold combining the horse or wagering interest which finishes first in one of the daily double races, the daily double pool is distributed as if it were a win pool, with the net pool allocated to wagering combinations which include the horse or wagering interest which finished first in one of the daily double races.

4. If no daily double ticket is sold combining the horses or wagering interests which finish first in both the first and second race of the daily double, then the winning combinations for distribution of the daily double profit shall be that combining the horses or wagering interests which finished second in each of the daily double races.

5. If, after daily double wagering has begun, a horse not coupled with another as a wagering interest in the first race of the daily double is excused by the stewards or is prevented from obtaining a fair start, then daily double wagers combining the horse shall be deducted from the daily double pool and shall be promptly refunded.

6. If, after the first race of the daily double has been run, a horse not coupled with another as a wagering interest in the second race of the daily double is excused by the stewards or prevented from obtaining a fair start, then daily double wagers combining the winner of the first daily double race with the horse, which was excused or was prevented from obtaining a fair start, shall be allocated a consolation daily double.

7. Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered combining the winner of the first daily double race with every horse or wagering interest scheduled to start in the second daily double race, the quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race with the horse prevented from racing in the second daily double race. The return to the holder includes the amount wagered and the profit. The consolation payoff shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

8. If for any reason the first race of the daily double is cancelled and declared "no contest" a full and complete refund shall be promptly made of the daily double pool.

9. If for any reason the second race of the daily double is cancelled and declared "no contest," the net daily double pool shall be paid to the holders of daily double tickets which include the winner of the first race. If no such ticket is sold, then the net daily double pool shall be paid to the holders of daily double tickets which include the second place horse. If no daily double tickets were sold on the second place horse, then the licensee shall make a prompt refund.

C. Quinella pools.

The quinella wager is the purchase of a pari-mutuel ticket to select the first two horses to finish in the race. The order in which the horses finish is immaterial. The amount wagered on the winning combination, the first two finishers irrespective of which horse finishes first and which horse finishes second, is deducted from the net pool to determine the profit. The net pool is divided by the amount wagered on the winning combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the quinella pools:

1. If there is a dead heat for first between horses including two different wagering interests, the net quinella pool is distributed as if no dead heat occurred. If there is a dead heat among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and the pool is allocated to wagers combining any of the three horses finishing in the dead heat for first.

2. If there is a dead heat for second between horses including two different wagering interests, the net quinella pool is distributed as if it were a place pool

and it is allocated to wagers combining the first finisher with either horse finishing in a dead heat for second. If the dead heat is among horses involving three different wagering interests, the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining the first horse with each of the three horses finishing in a dead heat for second.

3. If horses representing a single wagering interest finish first and second, the net quinella pool shall be allocated to wagers combining the single wagering interest with the horse or wagering interest with the horses or wagering interest which finishes third.

4. If no quinella ticket is sold combining the first finisher with one of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse finishing in a dead heat for second.

5. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses which finished in the dead heat for second.

6. If no quinella ticket is sold combining the first finisher with either of the horses finishing in a dead heat for second, or combining the two horses which finished in a dead heat for second, the the net quinella pool is distributed as if it were a show pool and it is allocated to wagers combining any of the first three finishers with any other horses.

7. If no quinella ticket is sold combining the first two finishers, then the net quinella pool shall be distributed as if it were a place pool and it is allocated to wagers combining the first finisher with any other horses and to wagers combining the second finisher with any other horse.

8. If no quinella ticket is sold combining horses or wagering interests as would require distribution, a full and complete refund shall be made of the entire quinella pool.

9. If a horse is excused by the stewards, no further quinella tickets shall be issued designating that horse, and all quinella tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

D. Perfecta pools.

The perfecta wager is the purchase of a pari-mutuel ticket to select the two horses that will finish first and second in a race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first and the horse finishing second, in exact order, is the amount to be deducted from the net perfecta pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning perfecta combination. The return to the holder includes the amount wagered and the profit. In addition, the following provisions apply to the perfecta pool:

1. If no ticket is sold on the winning combination of a perfecta pool, the net perfecta pool shall be distributed equally between holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.

2. If there is a dead heat between two horses for first place, the net perfecta pool shall be calculated and distributed as a place pool, one-half of the net perfecta pool being distributed to holders of tickets selecting each of the horses in the dead heat to finish first with the other horse to finish second.

In case of a dead heat between two horses for second place, the net perfecta pool shall be calculated as a place pool, one-half of the net perfecta pool being distributed to holders of tickets selecting the horse to finish first and one horse in the dead heat, and the other one-half being distributed to holders selecting the horse to finish first and the other horse in the dead heat.

3. If there is a dead heat for second place and if no ticket is sold on one of the two winning combinations, the entire net perfecta pool shall be calculated as a win pool and distributed to holders of the other winning combination. If no tickets combine the winning horse with either of the place horses in the dead heat, the net perfecta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

4. If an entry finishes first and second, or mutuel field horses finish first and second, the net pool shall be distributed to holders of tickets selecting the entry to win combined with the horses having finished third.

5. If no ticket is sold that would require distribution of a perfecta pool, the licensee shall make a complete and full refund of the perfecta pool.

6. If a horse is excused by the stewards, no further perfecta tickets shall be issued designating that horse, and all perfecta tickets previously issued designating that horse shall be refunded and deducted from the gross pool.

E. Trifecta pools.

The trifecta wager is purchase of a pari-mutuel ticket to select the three horses that will finish first, second, and third in a race. Payment of the ticket shall be made only

to the holder who has selected the same order of finish as officially posted. The amount wagered on the winning combination, the horse finishing first, the horse finishing second, and the horse finishing third, in exact order, is deducted from the pool to determine the profit. The profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning combination. The return to the holder includes the amount wagered and the profit.

1. If no ticket is sold on the winning combination, the net trifecta pool shall be distributed equally among holders of tickets designating the first two horses in order.

2. If no ticket is sold designating, in order, the first two horses, the net trifecta pool shall be distributed equally among holders of tickets designating the horse to finish first.

3. If no ticket is sold designating the first horse to win, the net trifecta pool shall be distributed equally among holders of tickets designating the second and third horses in order. If no such ticket is sold, then the licensee shall make a prompt refund.

4. If less than three horses finish, the payout shall be made on tickets selecting the actual finishing horses, in order, ignoring the balance of the selection.

5. If there is a dead heat, all trifecta tickets selecting the correct order of finish, counting a horse in a dead heat as finishing in either position involved in the dead heat, shall be winning tickets. The net trifecta pool shall be calculated as a place pool.

6. The uncoupling for betting purposes of horses having common ties is prohibited in races upon which trifecta wagering is conducted.

7. If a horse is excused by the stewards, no further trifecta tickets shall be issued designating that horse, and all trifecta tickets previously issued designating the horse shall be refunded and deducted from the gross pool.

F. Pick three pools.

The pick three wager is the purchase of a pari-mutuel ticket to select the winners of three races designated by the licensee for pick three wagering. Payment of the ticket shall be made to holder who has selected the winners of the three different races designated for pick three wagering, unless otherwise provided for in these regulations.

1. Those horses constituting an entry of coupled horses or those coupled to comprise the mutuel field in a race comprising the pick three wager shall race as a single wagering interest for the purpose of pool calculation and payment. However, if any part of a coupled entry or the mutuel field racing as a single wagering interest is a starter in a race, the entry or field selection shall remain as the designated wagering interest to win in that race for the pick three calculation, and the selection shall not be deemed a scratch.

2. The entire net pick three pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the three races comprising the pick three wager.

3. In the event there is no pari-mutuel ticket which correctly designates the official winner in each of the three races comprising the pick three wager, the major share (75%) shall not be distributed but shall be carried over to the next racing day and shall be added to the pick three pool for distribution among holders of pick three tickets which correctly designate the official winner in each of the three races comprising the pick three wager. The minor share (25%) will be distributed among holders of pick three tickets which correctly designate the most official winners, but fewer than three, of the races comprising the pick three wager.

4. In the event a pick three pari-mutuel ticket designates a selection in any one or more of the races comprising the pick three and that selection is excused by the stewards or is prevented from obtaining a fair start, the actual favorite(s) as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payouts to the holders.

5. In the event of a dead heat for win between two or more horses in any pick three race, all horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

6. No pick three ticket shall be refunded except when all three races are cancelled or declared "no contests." The refund shall apply to the pick three pool established on that racing card. Any "net pool" accrued from a carryover from a previous pick three shall further be carried over to the next pick three pool scheduled by the licensee conducting the race meeting.

7. In the event that any number of races less than three comprising the pick three are completed, 100% of the net pool for the pick three shall be distributed among holders of tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick three pool in which less than three races have been completed. Any net pool carryover from a previous pick three pool shall be further carried over to the next pick three scheduled by the licensee.

8. Should no distribution be made pursuant to these regulations on the last day of the horse race meeting in which pick three wagering is offered, then that portion of the distributable pool and all moneys accumulated shall be distributed to the holders of tickets correctly designating the most winning selections of the three races comprising the pick three that day.

9. In the event that a licensee is unable to distribute the retained distributable amount carried over from any prior pick three pool established pursuant to this rule by the end of its race meeting due to cancellation of the final program of racing or any other reason, the retained distributable amount shall be invested with interest, in a manner approved by the commission. The principal and interest shall be carried forward to the next race meeting having a pick three at the same location and of the same breed of horses that generated the retained distributable amount.

10. In the event a race meeting is not conducted at that location, with the same breed of horses that generated the net pick three pool with interest, the net pick three pool shall be remitted to the commission. A retained undistributed pick three carryover pool shall not for any purpose be considered as part of the unclaimed tickets pool.

11. No pari-mutuel ticket for pick three wagering shall be sold, exchanged or cancelled after the time of closing of wagering in the first of the three races comprising the pick three, except for refunds on pick three tickets as required by these regulations. No person shall disclose the number of tickets sold in the pick three pool, or the number or amount of tickets selecting winners of the pick three races until the stewards have declared the last pick three race each day to be "official."

G. Pick six pools.

The pick six wager is the purchase of a pari-mutuel ticket to select the winners of six races designated by the licensee for pick-six wagering. Payment of the ticket shall be made to holder who has selected the winners of the six different races designated for pick six wagering, unless otherwise provided for in these regulations.

1. Those horses constituting an entry of coupled horses or those horses coupled to comprise the mutuel field in a race comprising the pick six wager shall race as a single wagering interest for the purpose of pool calculation and payment. However, if any part of either an entry or the field racing as a single wagering interest is a starter in a race, the entry or the field selection shall remain as the designated to win in that race for the pick six calculation, and the selection shall not be deemed a scratch.

2. The entire net pick six pool shall be distributed among the holders of pari-mutuel tickets which correctly designate the official winner in each of the six races comprising the pick six wager.

3. In the event there is no pari-mutuel ticket which correctly designates the official winner in each of the six races comprising the pick six, the major share (75%) shall not be distributed but shall be carried over to the next racing day and be added to the pick six pool for distribution among holders of pick six tickets which correctly designate the official winner in each of the six races comprising the pick six wager. The minor share (25%) shall be distributed among holders of pick six tickets which correctly designate the most official winners, but fewer than six, of the races comprising the pick six wager.

4. In the event a pick six pari-mutuel ticket designates a selection in any one or more of the races comprising the pick six and that selection is excused by the stewards or is prevented from obtaining a fair start, the actual favorites(s) as evidenced by the amounts wagered in the "win pool" at the time of the start of the race, will be substituted for the nonstarting selection for all purposes, including pool calculations and payouts to the holders.

5. In the event of a dead heat for win between two or more horses in any pick six race, all horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

6. No pick six ticket shall be refunded except when all six races are cancelled or declared "no contests." The refund shall apply to the pick six pool established on that racing card. Any "net pool" accrued from a carryover from a previous pick six shall further be carried over to the next pick six pool scheduled by the licensee conducting the race meeting.

7. In the event that any number of races less than six comprising the pick six are completed, 100% of the net pool for the pick six shall be distributed among holders of tickets that designate the most winners in the completed races. No carryover from a previous day shall be added to the pick six pool in which less than six races have been completed. Any net pool carryover from a previous pick six pool shall be further carried over to the next pick six scheduled by the licensee.

8. Should no distribution be made pursuant to these regulations on the last day of the horse race meeting in which pick six wagering is offered, then that portion of the distributable pool and all moneys accumulated shall be distributed to the holders of tickets correctly designating the most winning selections of the six races comprising the pick six that day.

9. In the event that a licensee is unable to distribute the retained distributable amount carried over from any prior pick six pool established pursuant to this rule by the end of its race meeting due to cancellation of the final program of racing or any other reason, the retained distributable amount shall be invested with interest, in a manner approved by the commission. The principle and interest shall be carried forward to the next race meeting having a pick six at the same location and of the same breed of horses that generated the retained distributable amount.

10. In the event a race meeting is not conducted at that location, with the same breed of horses that generated the net pick six pool with interest, the net pick six pool shall be remitted to the commission. A retained undistributed pick six carryover pool shall not for any purpose be considered as part of the unclaimed tickets pool.

11. No pari-mutuel ticket for pick six wagering shall be sold, exchanged or cancelled after the time of closing of wagering in the first of the six races comprising the pick six, except for refunds on pick six tickets as required by these regulations. No person shall disclose the number of tickets sold in the pick six pool or the number or amount of tickets selecting winners of the pick six races until the stewards have declared the last pick six race each day to be "official."

§ 3.9. Refunds.

A. Generally.

For all wagers other than the daily double, pick three or pick six, a refund at face value shall be made to all holders of pari-mutuel tickets on horses that have been excused by the stewards, participated in a race where no horse finished, or a race, where in the discretion of the stewards, was declared "no contest" for wagering purposes. Unless otherwise provided for in these regulations, no refund shall be made if the horse excused by the stewards is part of a coupled entry or the field.

B. Nonstarters in straight wagering.

If any horse is prevented from obtaining a fair start by failure of the starting gate or other untoward events, the entire amount in the win, place and show pools wagered on that horse shall be promptly refunded and the horse declared a nonstarter.

C. Nonstarters in multiple wagering.

In races on which multiple wagering is permitted, except on the second half of the daily double, pick three or pick six, if a horse is prevented from obtaining a fair start, the entire amount wagered on any combination including that horse shall be promptly refunded and the horse declared a nonstarter.

D. Cancelling pools due to nonstarters.

If any horse or horses are prevented from obtaining a fair start so that it would reduce the total number of starters below six, the following shall apply:

1. If horses representing five wagering interests obtain a fair start, the licensee may refund the entire amount wagered in the show pool;

2. If horses representing four or fewer wagering interests obtain a fair start, the licensee may refund the entire amount wagered in the show pool as well as place pool; and

3. If horses representing fewer than two interests obtain a fair start, the race may be declared "no contest" and the entire amount wagered in the win, place and show pools shall be promptly refunded.

E. Cancelling pools due to late scratches.

After wagering has commenced on a race and prior to the race being run, should a horse or horses be excused by the stewards resulting in a field of less than six different wagering interests, the following apply:

1. If horses representing five wagering interests will start, the licensee may refund the entire amount wagered in the show pool;

2. If horses representing five or fewer wagering interests will start, the licensee may refund the entire amount wagered in the show pool as well as place pool;

3. If horses representing fewer than two interests will start, the race may be cancelled and the entire amount wagered in the win, place and show pools shall be promptly refunded. However, the horse or horses shall race for the purse as nonwagering event.

F. No refunds.

If a horse is left at the post at the start, or the rider or driver is unseated, there shall be no refund.

G. Scratches in entries.

If two or more horses in a race are coupled as a wagering interest or the field, there shall be no refund unless all of the horses so coupled are excused by the stewards or all of the horses so coupled are prevented from obtaining a fair start. Discretion, however, is vested in the stewards to order a refund where a part of an entry in a stake, handicap, futurity or other special event is excused by the stewards or prevented from obtaining a fair start, where it is in the public interest to do so. In this instance, the remaining part of the entry shall race,

for the purse only.

H. Postponed races.

In the case of a race postponed beyond the day originally scheduled, all money wagered on the race shall be refunded.

I. Cancelling turf races.

In the event conditions require a race to be moved from the turf to the main racing surface, any advance wager shall be refunded at the request of the holder of the pari-mutuel ticket up until post time of the race immediately preceding the scheduled turf race. This regulation does not apply to pick three or pick six wagering.

J. Announcement of refunds.

In those cases where a refund is due the public or a pari-mutuel pool is cancelled, the licensee shall promptly inform the public through the public address system and other appropriate means of communication.

PART IV.
DISTRIBUTION OF PURSE MONEY.

§ 4.1. Purse amounts.

Pursuant to § 59.1-392 of the Code of Virginia, 8.0% of the pari-mutuel pools for straight wagering, and 9.0% of the pari-mutuel pools for multiple wagers shall be allocated for purse money to participants by the licensee. In making the distribution of purse money, the licensee shall, to the extent possible, maintain purse amounts in proper relationship to actual pari-mutuel handles.

§ 4.2. Adjustments to purses.

Should levels of pari-mutuel handle create overpayment or underpayment of purses paid during the course of the race meeting, the licensee shall make adjustments in each publication of its condition book to attempt to keep purses consistent with mutuel handles.

§ 4.3. Overpayments carried over.

If, at the end of the horse race meeting, an overpayment of purses has occurred, the overpayment shall be carried over to the next horse race meeting of the same breed and the overpayment may be recovered by the licensee. The licensee shall recover the overpayment on an even basis over the course of the horse race meeting to prevent serious inconsistencies in purse levels during the horse race meeting.

§ 4.4. Underpayments carried over.

If, at the end of a horse race meeting, an underpayment of purses has occurred, the underpayment shall be carried over to the next horse race meeting of the same breed. The underpayment must be paid to the horse owners by adding the underpayment to the purses. The licensee shall repay the underpayment on an even basis over the course of the horse race meeting to prevent serious inconsistencies in purse levels during the horse race meeting.

§ 4.5. Willful underpayment.

Should the commission determine that a licensee willfully failed to adjust purse levels in violation of these regulations for the purposes of retaining purse underpayments from one race meeting to the next, the licensee will be the subject of disciplinary action of the commission.

§ 4.6. Escrow accounts.

All money received by a licensee for races that require nominating, sustaining, entry, or starting fees must be placed in interest bearing escrow accounts, and all accrued interest must be added to these races if: (i) the total fees received for the race exceed $15,000; or (ii) fees are due and payable for the race more than 180 days in advance of the advertised date of the running of the race.

VA.R. Doc. No. R94-315; Filed December 8, 1993, 9:59 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-53-01.2. Child Day Care Services Policy.**

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Public Hearing Date: January 12, 1994 - 10 a.m.
Written comments may be submitted until February 28, 1994.
(See Calendar of Events section for additional information)

Basis: This regulation is issued under authority granted by §§ 63.1-25 and 63.1-55 of the Code of Virginia. These sections grant the State Board of Social Services the authority to promulgate regulations and the local departments of social services the authority to purchase, where needed, child day care services for children.

Purpose: The purpose of this regulation is to provide local departments of social services with the policy they need to implement the child day care program and to provide child day care services for eligible families. It provides the parameters within which the department will implement its day care programs. It specifies who is eligible for services and how these services will be provided.

Substance: This regulation provides policy for all of the child day care programs that are administered by local departments of social services. It updates policy so that health and safety requirements are applied to unregulated child day care providers, and it proposes a new statewide sliding fee scale for those programs where fees are paid. It identifies the populations that are eligible for assistance with child day care services and the reasons assistance is given. It identifies the providers that can be used, how they will be selected, and how they will be paid. It specifies how services to families will be offered and monitored, and how families will be determined eligible. It includes what families will have to pay a fee for child day care and how those fees will be determined. It also identifies how complaints related to child day care settings used will be handled.

Issues: One issue related to this proposed policy is the degree of regulation required of child day care providers used by customers receiving subsidy from local departments. While some child day care advocates have recommended allowing only regulated providers, there is much unregulated family care operating in Virginia which is legally exempt from regulation. Often this care is informal care provided by neighbors, friends or relatives. Often customers choose this type of informal care due to night, swing-shift, or weekend working hours. In many parts of the state there is a real shortage of regulated care. For all of the reasons cited above, this regulation allows the use of unregulated child care. However, it does impose certain health and safety requirements on this unregulated care except for grandparents, aunts and uncles, who are exempt from such requirements by federal regulation.

Another issue related to this regulation is the proposal to change the state sliding fee scale. Currently there is not enough funding to serve all eligible families with child day care fee schedule subsidy funds. In many localities there are long waiting lists. The current fee scale requires as little as 1.0%, 2-1/2%, 5.0% or 7-1/2% of gross income from some families, and as much as 10% or 15% for others depending upon where their income falls on the state median income scale. The current fee scale is also more complex to administer than calculating the required fee. For these reasons the department is considering a scale that will increase the fee from the majority of families served, thereby allowing more families to receive subsidy and allowing for a broader utilization of limited resources.

Estimated Impact: In accordance with federal requirements, the regulation will assure that parents have a choice in selecting their child care provider. They will receive assistance from the local agency in making their selection and will receive materials that will help inform them about how to choose and monitor quality child care. When parents choose a provider who is exempt from regulation (unless that provider is a grandparent, aunt or uncle), the provider will have to meet certain requirements related to health and safety in order to be paid by the local department.

There will be 28,000 children and 18,436 families affected by this regulation.

The impact of this change to unregulated providers includes the cost of having a one-time-only state criminal history record check ($10), a child protective services check ($5), and a tuberculosis skin test (cost ranging from $4 - $10) for the provider, adults living in the provider's home and any assistants.

There will also be the impact upon customers of changing the sliding fee scale to charge a copayment fee of 10% of gross income.

Summary:

This policy provides the guidance for local departments of social services to enable them to comply with federal regulations for child day care programs and to help assure the health and safety of children in child care funded through programs administered by the department.

This regulation provides policy for all of the child day care programs that are administered by local departments of social services. It updates policy so that health and safety requirements are applied to unregulated child day care providers, and it proposes a new statewide sliding fee scale for those programs where fees are paid. It identifies the populations that are eligible for assistance with child day care services and the reasons assistance is given. It identifies the providers that can be used, how they will be selected, and how they will be paid. It specifies how services to families will be offered and monitored, and how families will be determined eligible. It includes what families will have to pay a fee for child day care and how those fees will be determined. It also identifies how complaints related to child day care settings used will be handled.

VR 615-53-01.2. Child Day Care Services Policy.

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:

"Aid to Families with Dependent Children (AFDC)" means a program established by Title IV-A of the Social Security Act and authorized in Virginia by Chapter 6 (§ 63.1-86 et seq.) of Title 63.1 of the Code of Virginia. This program provides benefits to needy children who are deprived of parental support or care.

"Aid to Families with Dependent Children-Unemployed Parent (AFDC-UP)" means the program authorized in § 407 of the Social Security Act which provides aid to dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner.

"Agency" means a local department of social services/welfare.

"At-Risk Child Care" means the federal allocation to states from Title IV-A that provides for subsidized child care to eligible low-income working parents.

"Child Day Care and Development Block Grant" means the federal block grant for day care that was authorized under the Development Block Grant Act of 1990, § 5082 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508. The purpose of this block grant is to increase the availability, affordability, and quality of child care.

"Child day care services" means those activities that assist eligible families in the arrangement and purchase of day care for children.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Day care center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care; or (ii) 13 or more children at any location.

"Child protective services" means a specialized continuum of casework services to abused, neglected or exploited children and families. The focus of the services is identification, assessment and service provision in an effort to prevent the maltreatment of children.

"Department" means the Virginia Department of Social Services.

"Deprivation" means, for purposes of eligibility for transitional child care, that the child is deprived of parental support or care by reason of the death, continued absence from the home, physical or mental incapacity or unemployment of a parent.

"Education leading to employment" means the pursuit of basic remedial instruction to achieve a basic literacy level, instruction in English as a second language, preparation for G.E.D. or adult education, the completion of high school, associate degree or certificate, work at the college level or bachelor degree from a college or university if the course of instruction is limited to a curriculum directly related to the fulfillment of an individual's educational goal to obtain useful employment in a recognized profession or occupation.

"Employment Services Program (ESP)" means a program operated by the Department of Social Services which helps AFDC, AFDC-UP and GR recipients in securing employment or the training or education needed to secure employment as required by § 63.1-133.12:1 of the Code of Virginia. This term may be used interchangeably with JOBS.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Federal Title IV-A funding" means funding provided to states from the federal government through the Social Security Act to fund the AFDC program, child day care for AFDC recipients, the transitional child day care program, and the At-Risk Child Care program.

"Fee system" means the program that provides child day care subsidy to low-income parents from the At-Risk Child Care funding and from the Child Care and Development Block Grant funding.

"FSET" means Virginia's Food Stamp Employment and Training Program, a program to provide non-AFDC able-bodied recipients of food stamps with employment and training.

"Full-time employment" means regularly scheduled activities that engage a participant in employment for 30 or more hours per week.

"Good cause" means a valid reason why an unemployed parent in a two-parent household cannot provide the needed child day care. The rationale for the agency's decision must be documented in the case record.

"Income eligible" means that eligibility is based on income and determined by measuring the family income and size against the state median income chart.

"In-home day care provider" means a person who is responsible for the supervision and care of children in the child's own home.

"IV-A earned income disregard" means the method by which the cost of child day care is handled in determining eligibility for and the amount of the benefit for working applicants and recipients of AFDC.

"JOBS" means the Job Opportunities and Basic Skills Training Program for AFDC, General Relief, and AFDC-UP recipients effective October 1, 1990. This term may be used interchangeably with ESP, the Employment Services

Program.

"Job search" means an activity whereby participants are required to make a certain number of employer contacts a week for a specific length of time.

"Market rate" means the 75th percentile of the range of costs in a community for a particular type of child day care.

"On-the-job training" is employment-related training provided by the employer.

"Parent" means primary adult caretaker or guardian of a child.

"Parental access" means that parents may visit the day care setting at any time their child is in care.

"Part-time employment" means any regularly scheduled activity that engages a participant in employment for a minimum of eight hours but less than 30 hours per week.

"Postsecondary education" means any course of instruction beyond that of high school offered by an institution of higher education or a vocational school as determined by the Secretary of Education to meet the Higher Education Act of 1965.

"Provider" means an individual, agency or organization operating a child day program.

"Purchase of Service Order" means a form sent to a vendor to authorize the delivery of services to a client.

"Regulation" means a process by which a child day care provider becomes federally approved, state licensed, city approved, county approved, local agency approved, or has met the requirements of Small Family Child Care Home Voluntary Registration. Providers who meet these requirements shall be referred to as regulated providers. Effective October 1, 1993, religiously exempt centers will be considered regulated.

"Resource and referral services" means provision of support, education and assistance for parents in choosing child care. These services are sponsored by a variety of agencies, and often include assessment of the need for child care in a community, collection and maintenance of information about child care needs and issues, efforts to improve the quality of child care in the community through the provision of training and support for providers, and efforts to increase the supply of child care in the community through recruitment and technical assistance to potential providers.

"Satisfactory progress" means that the participant in any educational or training activity is meeting, on a periodically measured basis of less than one year such as a term or quarter, a consistent standard of progress based on written policy developed by the educational institution or training agency and approved by the IV-A agency.

"Service plan" means the written, mutually agreed upon course of action determined by the parent and service worker.

"Special needs child day care" means care provided to children with diagnosed physical, mental or emotional problems such as learning disabilities, behavior disorders, or inability to adjust with the family and peers; children with developmental disabilities, atypical development, or deficit in social functioning.

"State median income (SMI)" means the level of income by family size which represents the midpoint of income levels in Virginia.

"TRADE," also called Project TRADE, is a work supplementation program in ESP to develop and subsidize jobs for AFDC recipients as an alternative to aid.

"Training leading to employment" means the development of specific work attitudes, behaviors, or skills leading to job readiness as well as the development of specific technical or vocational skills that lead to employment in a recognized occupation and results in other than a baccalaureate or advanced degree.

"Transitional child day care services" means the day care services (up to 12 months) for which certain former recipients of AFDC are eligible.

"Unregulated provider" means any child day care provider who is not federally approved, state licensed, city approved, county approved, local agency approved, or registered under the Voluntary Small Family Child Care Home Registration program, and is not required to be regulated. Effective October 1, 1993, religiously exempt centers will be considered regulated.

"USDA Child and Adult Care Food Program" means the United States Department of Agriculture program to reimburse child care providers for nutritious meals and snacks served to children in care while parents work.

"Vendor" means a provider who can sell services.

"Voluntary Small Family Child Care Home Registration" means the procedures by which a small family day home becomes state registered on a voluntary basis using approved standards. Providers registered with this program are considered to be regulated.

"Work experience" means unpaid job training with clearly defined duties at a well-supervised worksite.

PART II.
POLICY.

Article 1.
Child Day Care Programs and Families to be Served.

§ 2.1. Families and children to be served.

Child day care services shall be provided for eligible families with children who need day care and who are under age 13, or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision. Day care shall not be purchased for children who are eligible to attend kindergarten or for older children during that portion of a day when appropriate public education is available unless there are reasons the children must be out of school.

§ 2.2. Recipients of Aid to Families with Dependent Children (AFDC); income eligible recipients.

A. If there is a need for day care and all eligibility requirements are met, recipients of AFDC are eligible for child day care services if both the child receiving day care and the parent/caretaker are on the AFDC grant, or if the child would have been in the public assistance unit were it not for the receipt of SSI or foster care payments.

1. AFDC/working. Children in an AFDC public assistance unit are entitled to necessary child day care services to enable an AFDC eligible family member to work.

2. AFDC education/training. To the extent of available funding, children in an AFDC public assistance unit are eligible for necessary child day care services to enable an AFDC eligible family member to participate in education/training.

B. Child day care subsidy for income eligible parents shall be available on a sliding fee scale basis.

1. Transitional child day care services. Parents are entitled for up to 12 consecutive months of child day care if they have received AFDC, are found to be income eligible, and meet the following criteria:

a. The family ceased being eligible for AFDC as a result of increased hours or income from employment.

b. The family must have received AFDC for at least three of the six months immediately preceding the first month of ineligibility for AFDC benefits.

c. The family requests transitional child day care benefits.

2. Fee system child day care services.

a. Fee System/At-Risk. To the extent of available funding, the Fee System/At-Risk Program shall be used to provide child care subsidies to income eligible clients who are employed.

b. Fee System/Block Grant. To the extent of available funding, the Child Care and Development Block Grant shall be used to provide child care subsidies to income eligible clients who are employed, in education/training programs, or receiving child protective services.

3. Food stamp recipients. To the extent of funding, child day care shall be made available for children of recipients of food stamps who are participating in Virginia's Food Stamp Employment and Training Program, at a cost of up to the federally allowed maximum of $160 per month per dependent.

§ 2.3. Good cause/two-parent households.

In two-parent households where one parent is unemployed, there shall be good cause why that parent cannot provide the needed child care before payment for child day care will be made.

Article 2.
Provider Requirements.

§ 2.4. Degree of regulation required.

Providers of services funded from the AFDC/Working, AFDC Education/Training, Transitional, Fee System/At-Risk and FSET child day care programs may be regulated or unregulated. Unregulated providers are legally exempt from regulation based upon the number and age of children in care. Providers funded through the Fee System/Block Grant program must be regulated, except grandparents, aunts and uncles.

§ 2.5. Requirements for unregulated providers.

A. When parents choose an unregulated provider (unless the provider is a grandparent, aunt or uncle not otherwise subject to regulation), the local department, the parent, and the provider shall work together to assist the provider in meeting basic health and safety requirements. The local department shall provide the parent with information on how to choose and monitor quality child care, and shall assist the provider to secure for the provider, all adults living in the household and all assistants:

1. A state criminal history record check,

2. A child protective services check, and

3. A tuberculosis test.

For in-home care, only the provider is required to obtain the above clearances.

B. The parent shall also be given a health and safety checklist by the agency. The parent shall give the checklist to the provider and participate in its completion. The checklist must be signed by both the parent and the provider. It will be the responsibility of the provider to return the completed checklist and all of the clearances to

the local department and payment cannot be made until all required materials have been submitted. Unregulated providers must be at least 18 years of age.

Use of an unregulated provider must be denied if the State Criminal History Record Check shows that the person checked has been convicted of a barrier crime, if the Child Protective Services check reveals that the person checked is in the Central Registry as "Founded" or "Reason to Suspect," if the result of the tuberculosis test shows that the person tested is not free of tuberculosis in a communicable form, or if the health and safety checklist is returned incomplete.

§ 2.6. Complaints in the day care setting.

All complaints regarding possible child abuse or neglect occurring in a child day care setting must be referred to the child protective services unit at the local agency serving the area where the day care service is located. Information regarding the complaint shall be shared with the worker responsible for licensure or approval. All other complaints shall be referred to the approving authority.

Article 3.
Determination of Services to be Provided.

§ 2.7. Case management: assessment; reassessment; termination/after care services; waiting lists.

A. Parents who request day care services shall be required to sign a service application and cooperate with an assessment by the local agency.

1. Service plan. A written service plan shall be completed for every child day care case. If parents are active with the Employment Service Program, the ESP/JOBS Employability Plan or the ESP/JOBS Activity and Service Plan may serve as the service plan.

2. Selection and monitoring of provider. The parent shall receive child day care resource and referral services to assist in the process of selecting a provider who will meet the needs of the children.

a. Agencies shall not establish policies that limit parental choice of providers. Parents may choose either child day centers, family day homes or in-home care. Unless there are extenuating circumstances, agencies shall purchase only the amount of child care required to support the approved activity.

b. Providers shall afford parents unlimited access to their children.

c. A child's relative may be a child day care provider, as long as the individual is not a part of the public assistance unit or legally responsible for the children needing care.

3. Parental responsibilities. Once eligibility is determined, parents shall be informed as to whether their full costs of child day care will be paid or whether they will be required to pay a fee, and, if so, the amount of that fee. It is the parent's responsibility to pay all fees owed directly to the provider. Parental failure to pay fees may result in ineligibility for services.

Parents shall be informed of their responsibility to report within 10 days to the local agency changes in choice of providers, family size, income, or any other changes that could affect their eligibility for services. Parents receiving services from the Division of Child Support Enforcement shall cooperate with that division except for good cause.

B. Parents and providers shall cooperate with the local agency, which shall make a direct contact at least quarterly with a member of the case household or the provider. The service worker shall evaluate, at least quarterly, whether the child day care services authorized are meeting the needs of the child and parent.

C. Agency termination of child day care services shall be planned jointly with the parent and the provider. The agency shall determine if continued services are needed and assist the family with appropriate referrals.

Adequate documentation supporting the reasons for termination shall be filed in the case record. If the locality proposes to deny, discontinue, terminate, or reduce child day care benefits, a written Notice of Action (#032-02-103/2) or letter must be sent to the parent at least 10 days in advance of the date the action is to become effective. If the parent disputes this decision, they are entitled to a fair hearing.

D. In any of the nonentitlement child day care programs, it may become necessary to place a family on a local agency waiting list. Therefore, local agencies shall have a waiting list policy for these day care funding sources. The local agency shall add the parent's name to a waiting list upon request. Service by date of request is an acceptable means of administering a waiting list. Any other proposed policy for a waiting list, such as by degree of need or at-risk status, shall be sent to the regional office of the department for approval prior to submission to the local board of social services. A waiting list policy must assure that decisions are made uniformly.

§ 2.8. Types of payment.

Parents may choose whether the agency will make payment for child day care services by means of direct payment to the provider or by reimbursement to the parent.

For the reimbursement method, the parent must provide documentation of adequate income or resources that would enable them to pay the provider prior to seekin

reimbursement. Parents will receive reimbursement when they submit proper documentation and receipts to the agency.

AFDC recipients who are working may choose to take the IV-A earned income disregard for child day care expenses, whether the provider selected is regulated or unregulated.

§ 2.9. Determining payment amount.

Payment rates shall be determined as follows:

1. Market rates. The department shall establish local market rates for child day care for all localities in the state by type of care. Agencies shall pay the rates and fees providers charge the general public or a negotiated rate. The payment shall not exceed the local market rate for a particular type of care. For special needs children, 100% of the cost of care may be paid, even if this exceeds the established market rate. Agencies shall not establish their own maximum monthly rates of pay.

Parents who choose to place a child in a facility whose rate is above the local market rate shall pay the additional amount themselves, unless the agency elects to pay the additional amount out of local only funds.

2. Unit price. The unit price of service shall be based on a week or less. Rates paid will be based on provider enrollment and attendance practices and department payment policies.

With the exception of a single annual registration fee the total cost of care, including special programs, activities fees and transportation, shall not exceed the local market rate and shall be identified and entered on the Purchase Order as one day care cost. When a single annual registration fee is not included in the rate charged by the provider, it shall be paid by the agency separately.

Transportation services shall be paid using day care funds only when the transportation services are provided by the day care provider.

3. Optional payments. Child day care may be purchased if child care arrangements would otherwise be lost for up to two weeks prior to the start of employment or training and for up to one month during a break in employment or training if a subsequent activity is scheduled to begin within that period. Child day care may also be purchased if the parent is ill or incapacitated, or if the child is absent from care for up to four weeks for justifiable reasons as set forth in the Service Plan.

4. Beginning date of service payment. The beginning date of service payment authorization shall be:

a. The date the application/request for service is received in the agency if the client/family is determined eligible within 45 days; or

b. If determination is made more than 45 days after the application/request is received, services may begin only on the date eligibility is determined.

For the Transitional Child Day Care Program, payment shall be made retroactive to the date of eligibility (the month following the loss of AFDC) if the parent has requested the service, has proper receipts for day care paid, and has proof of employment.

5. Sliding fee scale. Child day care services shall be available to income eligible and transitional recipients with parental copayments based on a sliding fee scale. To the extent of available funds localities shall serve eligible families who earn 50% or less of the state median income (SMI). Localities can opt to serve families who earn up to 75% of the state median income with federal and state funds, and above 75% with local funds.

The sliding fee scale established by the State Board of Social Services shall be used statewide for determining fees owed by parents under the Transitional and Fee System Programs. Fees will be 10% of the gross taxable income with a $25 minimum monthly copayment. All parents with income receiving sliding fee scale subsidy must contribute towards the cost of their child day care.

Localities may limit receipt of Fee System Program subsidies to a maximum of five years.

VA.R. Doc. No. R94-331; Filed December 8, 1993; 10:58 a.m.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
CHILD DAY CARE

CHILD DAY CARE PROVIDER RATE VERIFICATION

PART I

Name _____ Telephone _____

Address _____

Hours of Operation _____ Days of Operation _____

PART II DESCRIPTION OF SERVICES

(1) Service: _____

Unit Price (D, W, M) _____

(2) Service: _____

Unit Price (D, W, M) _____

(3) Service: _____

Unit Price (D, W, M) _____

PART III

Signature of Provider _____ Date _____

PART IV OFFICIAL USE ONLY

Regulated ☐ Applicable Market

Un-Regulated ☐ Rate(s) (1) _____

(2) _____

(3) _____

PROVIDER

REGISTRAR OF REGULATIONS
93 DEC -8 AM 10: 58

16. FORMS AND INSTRUCTIONS

Day Care Child's Emergency Medical Authorization

CHILD'S MEDICALLY DISCREDED ALLERGIES OR CHRONIC CONDITIONS ETC.

CHILD'S MEDICAL NUMBER

OTHER INSURANCE ☐YES ☐NO IF YES, COMPANY

INSURANCE NUMBER

The Parent/Guardian authorizes immediate medical care and consents to the hospitalization of, the performance of necessary diagnostic tests upon, the use of surgery on, and/or the administration of drugs to his/her child or ward if an emergency occurs when he/she cannot be located immediately.

SIGNATURE OF PARENT OR GUARDIAN DATE

NOTE: THIS FORM IS TO BE KEPT BY THE PROVIDER AND IS TO BE TAKEN TO THE DOCTOR OR TREATMENT FACILITY IN CASE OF EMERGENCY.

REGISTRAR OF REGULATIONS
93 DEC -8 AM 10: 58

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

CHILD DAY CARE

Case Name _____ Case # _____ Date _____

CHILD DAY CARE FEE SYSTEM WORKSHEET

Number in Family Unit _____	
Gross Monthly Income = A	A =
(TAKE A TO FEE CHART) Percentage of income family pays as fee = B	B =
Amount family pays as fee = C Multiply family montly income by B — A x B = C	C =

032-02-093/1 (5/93)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
CHILD DAY CARE

CHILD DAY CARE FEE PAYMENT AGREEMENT

PART I — General Information (To Be Completed by Parent/Caretaker)

Parent/Caretaker _____ Home Telephone Number _____

Address _____ City, State, Zip _____

Children in Care:

1 _____ 3 _____ 5 _____

2 _____ 4 _____ 6 _____

PART II — Agreement by Parent/Caretaker

I have been determined eligible for day care financial assistance by the

_____
Local Department of Social Services

I agree to pay a monthly fee of _____ to (provider name) _____ for the provision of child day care services for the child(ren) listed above. I agree that this fee payment is due on (date) _____ of each month unless other arrangements have been made with my day care provider. I understand that if my fee is not paid as per the agreement my day care provider may refuse to accept my child(ren) into care until all fees are paid or my provider and I agree to a repayment plan.

Signed _____ Date _____

PART III — Agreement by Day Care Provider

I agree to accept the stated fee amount for the provision of day care services per the agreement in Part II. I will bill the local department of social services for the remainder of my monthly day care charge following the contract provided by the local department of social services. I further agree to notify the department of social services if the parent/caretaker fails to make the payment as required by Part II of this agreement.

Signed _____ Date _____

PARENT/GUARDIAN

HEALTH AND SAFETY CHECKLIST FOR UNREGULATED PROVIDERS

Return to:
Local Department of Social Services Mailing Address

Worker Name_____ Phone_____

INSTRUCTIONS:

The parent and the child care provider must fill out the form together in the home where care is provided.

Read statements in Sections I - V. If the statement is true, put a check mark in the "yes" column. If the statement is false, put a check mark in the "no" column. If the parent does not agree with any of the responses to the statements, she or he should list the number of those statements in Section V.

The provider must send the completed form to the service worker in the local department of social services. After receiving all necessary clearances and the completed Health and Safety Checklist, the worker will send a copy of the checklist to the parent and to the provider for their records.

Section I: To be filled out for Family Day Care Home Providers and In-Home Providers

HEALTH AND SAFETY STATEMENTS	Yes	No
1. If/when I drive the children in a motor vehicle, I make sure the vehicle meets the rules set by the Division of Motor Vehicles, such as: • Car has a current license plate • Car has safety inspection sticker • Car has local sticker • I have insurance for the car • I have a current driver's license		
2. Any motor vehicle used has required seat belts and car seats.		
3. I have the names and phone numbers of one or more persons other than the parent(s) who may be contacted in case of emergency.		

Section II: To be filled out for Family Day Care Home Providers

HEALTH AND SAFETY STATEMENTS	Yes	No
4. I have a working telephone, or can easily get to one.		
5. All areas of my property where the children are allowed are free of obvious dangers (for example, electrical outlets are covered).		
6. There are working smoke detectors in the areas where children are in care.		
7. My home is in good repair, clean and free of trash.		
8. I keep medicines and cleaning products away from food and I store them in places where children cannot reach them.		
9. If there are guns and ammunition on my property, I keep them unloaded, separated, and in a locked place.		
10. I have a first aid kit available.		
11. I have a working flashlight available.		
12. I wash my hands and the children's hands with soap before meals, after using the bathroom, and after diapering.		
13. I serve healthy meals and snacks to children.		
14. I make sure drinking water is available for the children.		
15. My home is not infested with insects or rodents.		
16. If there are dogs or cats on my property they have up-to-date rabies shots.		
17. I make sure pets are kept from areas where I prepare food.		

Section III: Assistants and Other Adults in the Home

Name _____ Social Security No. _____

Address (If other than the provider) _____

_____

Name _____ Social Security No. _____

Address (If other than the provider) _____

_____

Section IV: TO BE SIGNED BY PROVIDER

I have discussed the following with the parent:

I am not required by state law or local ordinance to be regulated.

I am at least 18 years of age.

I understand that failure to meet the requirements for unregulated providers will mean the local agency cannot pay me to provide child care.

I agree that I, my assistant if I have one, and other adults living in the household shall submit the results of a physical and/or mental health examination when requested by the agency if there is evidence of a problem.

I have a completed emergency medical release form permitting access to emergency care for each child receiving care paid by the local agency.

I have an up-to-date record of immunizations (shots) for each child receiving care paid by the local agency when care is provided outside the child's home.

I allow parents and agency staff to visit the day care setting at any time the child is in care.

I will not allow the use of alcohol or unlawful drugs by anyone in the home while children are in care.

I do not use physical punishment or any methods of discipline that embarrass children. I discuss with parents methods of discipline to be used.

All the information submitted above is true to the best of my knowledge.

Name (Print)_____ Date_____

Signature_____ Social Security No._____

Address_____

County/City_____ Phone No._____

Rates Charged $_____ Per Week / Day / Hour (circle one)

Section V: TO BE SIGNED BY PARENT

I have discussed the following with the provider and the agency:

I have chosen to use an unregulated provider.

I understand I have the right to visit my child at any time while in day care.

I have discussed with the provider the types of discipline to be used with my child and we agree that no physical punishment will be used.

I have discussed with the provider whether smoking is allowed in the provider's home. I am aware of the dangers to children of second hand smoke.

I do not agree with the responses given to the statement(s) in Sections I and II.

#_____.

All the information submitted above is true to the best of my knowledge.

Name (Print)_____

Signature_____ Date_____

Address_____

_____

Phone No. (Home)_____ (Work)_____

Local Agency Use Only:

RECEIVED		PAYMENT FOR CARE	
Health and Safety Checklist	_____	Date Payment Approved	_____
Criminal Records Check	_____	Date Payment Denied	_____
CPS Check	_____		
Tuberculosis Test	_____	Worker Signature	_____

*Approval for payment in no way constitutes regulation of this provider. This document is not a license or certification.

DEPARTMENT OF YOUTH AND FAMILY SERVICES (BOARD OF)

Title of Regulation: **VR 690-05-001. Standards Governing Research on Clients and Records of the Department.**

Statutory Authority: § 66-10.1 of the Code of Virginia.

Public Hearing Date: January 13, 1994 - 3 p.m.
Written comments may be submitted until February 28, 1994.
(See Calendar of Events section for additional information)

Basis: Section 66-10.1 of the Code of Virginia states that "the Board shall promulgate regulations pursuant to the Administrative Process Act (§ 9-6.14:1 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research, as defined in § 32.1-162.16, to be conducted or authorized by the Department...."

Purpose: The purpose of these standards is to ensure that research projects comply with all applicable state and federal laws and regulations, and with medical, societal and professional ethics; protect the public safety and the security of department facilities; protect the safety, health, privacy and confidentiality of clients and staff; prohibit unauthorized access to and publication of information that identifies individuals or families; and assure that research projects do not impede rehabilitation and treatment programs for clients.

Substance: These regulations set forth the process for receiving, reviewing, approving and monitoring proposals for research on clients and records of the department. Provision is made for a human research committee and for a written formal agreement with researchers specifying the objectives and benefits of the research, the resources required of the department, the research design including timeframes and techniques for data collection and analysis, and the method for publicizing the research findings.

Issues: The board recognizes that the application and review process may sometimes be slow, but feels that these deliberate procedural steps are reasonable to ensure the appropriateness of the research and to protect clients' safety and confidentiality. Provision is made for expedited review of research proposals in narrowly defined circumstances.

The board has made the policy judgment that the department should have the authority to recover reasonable costs associated with a given research project. In the past, some research projects entailed considerable personnel costs that were absorbed by the department. If a researcher is not able to pay these costs, the department may either disallow the research, or opt to absorb the costs as an investment in gathering the information.

Fiscal Impact: The proposed regulation essentially formalizes current department procedure governing research. The standards apply to all researchers from outside the department, who generally number about 12 per year.

The net cost of external research projects is not affected by the new standards. However, researchers may be asked to pay reasonable fees to cover costs that had previously been absorbed by the department, for example for personnel and materials costs associated with a given research project. The effect, in some cases, could be "cost shifting," by transferring some of the costs for a research project from the department to the researcher. It is anticipated that academic researchers who propose to conduct research projects under terms of a grant will be able to include in their grant applications the reasonable costs that may be required by the department.

Summary:

These regulations set forth the process for receiving, reviewing, approving and monitoring proposals for research on clients and records of the Department of Youth and Family Services. The process is designed so as not to impede rehabilitation and treatment programs for clients. Specifically, the standards establish a human research committee and require a written formal agreement with researchers specifying the objectives and benefits of the research, the resources required of the department, the research design including timeframes and techniques for collecting and analyzing data, and the method for publicizing the research findings. These proposed standards prohibit unauthorized access to and publication of information that identifies individuals or families. The proposed regulations also permit the department to recover reasonable costs associated with a given research project.

VR 690-05-001. Standards Governing Research on Clients and Records of the Department.

PART I.
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

"Client" means any individual or family who is

receiving or has received services, directly or indirectly, from the department.

"Committee" means the Human Research Review Committee of the Department of Youth and Family Services.

"Data research" means any systematic investigation using client records, responses or observations where the only potential risk is a loss of confidentiality due to identification of clients through such records, responses, or observations.

"Department" means the Department of Youth and Family Services.

"Director" means the Director of the Department of Youth and Family Services.

"Human research" means any systematic investigation of human subjects that may expose those subjects to physical or psychological injury, and that departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs, but does not include:

1. Activities of the Virginia Department of Health conducted pursuant to § 32.1-39 of the Code of Virginia.

2. Research or student learning outcomes assessments conducted in educational settings involving regular or special education instructional strategies, the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods, or the use of educational tests, whether cognitive, diagnostic, aptitude, or achievement, if the data from such tests are recorded in a manner so that subjects cannot be identified, directly or through identifiers linked to the subject.

3. Research involving solely the observation of public behavior, including observation by participants, or research involving survey or interview procedures unless data are recorded in such a manner that the subjects can be identified, directly or through identifiers linked to the subjects, and either:

a. The information about the subject, if it became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject's financial standing or employability; or

b. The research deals with sensitive aspects of the subject's own behavior, such as sexual behavior, drug or alcohol use, or illegal conduct.

4. The collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner so that subjects cannot be identified, directly or through identifiers linked to the subjects.

5. Medical treatment of an experimental nature intended to save or prolong the life of the subject in danger of death, to prevent the subject from becoming disfigured or physically or mentally incapacitated, or to improve the quality of the subject's life.

"Informed consent" means the knowing and voluntary agreement without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion, of a person who is capable of exercising free power of choice. For the purposes of human research, the basic elements of information necessary to such consent shall include:

1. A reasonable and comprehensible explanation to the person of the proposed procedures or protocols to be followed, their purposes, including descriptions of any attendant discomforts, and risks and benefits reasonably to be expected;

2. A disclosure of any appropriate alternative procedures or therapies that might be advantageous for the person;

3. An instruction that the person may withdraw his consent and discontinue participation in the human research at any time without prejudice to him;

4. An explanation of any costs or compensation which may accrue to the person and, if applicable, the availability of third party reimbursement for the proposed procedures or protocols; and

5. An offer to answer and answers to any inquiries by the person concerning the procedures and protocols.

"Institution" or "agency" means any facility, program, or organization owned or operated by the Commonwealth of Virginia, by any political subdivision, or by any person, firm, corporation, association, or other legal entity.

"Legally authorized representative" means the parent or parents having custody of a prospective subject; the legal guardian of a prospective subject; or any person or judicial or other body authorized by law to consent on behalf of a prospective subject to such subject's participation in the particular human research, including an attorney in fact appointed under a durable power of attorney, to the extent the power grants the authority to make such a decision. The attorney in fact shall not be employed by the person, institution, or agency conducting the human research. No official or employee of the institution or agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Minimal risk" means that the risks of harm anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

"Nontherapeutic research" means human research in which there is no reasonable expectation of direct benefit to the physical or mental condition of the human subject.

"Principal researcher" means an individual researcher who is responsible for the research design, the conduct of research, any research staff, and the research findings. The principal researcher signs a research agreement with the Department of Youth and Family Services.

"Research" means the systematic development of knowledge essential to effective planning and rational decision making. It involves the assessment of current knowledge on conceptual problems selected, statement of those problems in researchable format, design of methodologies appropriate to the problems, and the application of statistical techniques to organize and analyze data. Research findings should provide valuable information to management for policy options.

"Researcher" means an individual who has professional standing in the pertinent field or is supervised directly by such an individual.

"Research project" means the systematic collection of information, analysis of the data, and the preparation of a report of findings.

"Subject" or "participant" means any client or employee of the Department of Youth and Family Services who is requested to participate in human research.

§ 1.2. Applicability.

These regulations apply to all research studies which involve clients or employees of the Department of Youth and Family Services, whether through data, records, responses, observations, or direct contact.

§ 1.3. Exception.

Program evaluations, management studies and routine data analyses conducted by the Department of Youth and Family Services are exempt from this procedure.

§ 1.4. Supporting evidence.

It shall be the responsibility of the principal researcher to provide the information required for review by the Research and Planning Unit and the department's Human Research Review Committee.

§ 1.5. Budget and personnel constraints.

The Department of Youth and Family Services may refuse to accept, or may decline to authorize, research proposals which comply with these regulations when, in its sole discretion, it has insufficient financial or personnel resources to support outside research.

§ 1.6. Legal requirements.

The research shall comply with applicable laws, rules, and regulations of the Code of Virginia as amended, particularly Chapter 5.1 of Title 32.1 regarding human research and Chapter 11, Article 12 of Title 16.1, regarding confidentiality of juvenile records.

§ 1.7. Exemption for federally regulated research.

Pursuant to § 32.1-162.20 of the Code of Virginia, human research which is subject to policies and regulations for the protection of human subjects promulgated by any agency of the federal government shall be exempt from these these regulations.

§ 1.8. Subjects' rights.

The research shall not interfere with the rights of juveniles or their families, nor of department staff. In particular, research involving known and substantive physical, mental, or emotional risk to the participants, including the withholding of any prescribed program of treatment, is specifically prohibited. Juveniles and their families shall not be used for medical, pharmaceutical, or cosmetic experiments.

§ 1.9. Confidentiality of persons.

The research findings shall not identify individual participants.

§ 1.10. Confidentiality of records.

The confidentiality of all records and information shall be protected in accordance with applicable laws, rules, and regulations.

§ 1.11. Nondisruption of normal operations.

The proposed research shall not interfere significantly with the programs or operations of the department. The extent of interference shall be determined in consultation with the operating units that would participate in the proposed research.

§ 1.12. Benefits to justify involvement.

The proposed benefits of the research should justify the department's involvement.

§ 1.13. Compatibility with department operations.

The proposed research must be compatible with the purposes and goals of the juvenile justice system and with the department's organization, operations, and resources.

§ 1.14. Consequences of noncompliance.

Failure to comply with all requirements of these standards, including the submission of two copies of the final project report, may jeopardize future research projects with either the principal researcher or affiliated organization.

PART II.
REVIEW AND APPROVAL OF RESEARCH PROPOSALS.

Article 1.
Requirements of Research Proposals.

§ 2.1. Research Proposal Summary.

A complete Research Proposal Summary describing the proposed research project and a Research Agreement shall be submitted to the Research and Planning Unit prior to the department's involvement. The submission of any additional and supporting information about the proposed research project is encouraged.

The Research Proposal Summary shall contain:

1. Name, address, telephone numbers, title and affiliation of the principal researcher;

2. Name of the person who will supervise the project, if different from subdivision 1 of this section;

3. Funding source, if any;

4. Date of the proposal's submission to the Research and Planning Unit;

5. Title of the proposed research project;

6. Statement of the specific purpose(s) of the proposed research project with anticipated results, including benefit to the department;

7. A concise description of the research design and techniques for data collection and analysis, and of the likely effects of the research methodology on existing programs and institutional operations;

8. Time frames indicating proposed beginning and ending dates for data collection, analysis and preliminary report, and final report;

9. A listing of any resources the researcher will require from the department or its subsidiaries, such as personnel, supplies, materials, equipment, workspaces, or access to clients and files;

10. Project endorsement from the departmental operating unit that is to participate in the research (e.g., Learning Center, Court Service Unit, etc.);

11. Project endorsement for student research from the researcher's academic advisor or other appropriate persons;

12. Project endorsement from the appropriate juvenile and domestic relations judge(s) for research involving records of clients at state and local court service units; and

13. Project endorsement for human research from the institutional review board of the institution or organization with which the researcher is affiliated.

§ 2.2. Records retention requirement.

The Research and Planning Unit shall keep the Research Proposal Summary and Research Agreement on file for a period of three years. The researcher(s) shall keep all research documentation, publications, and records on file for a period of five years.

Article 2.
Review by the Department.

§ 2.3. Initial review by Research and Planning Unit.

The Research and Planning Unit shall:

1. Review all research projects;

2. Establish research priorities consistent with the needs of the department;

3. Review the design of the research;

4. Determine that research projects do not violate basic research standards and laws;

5. Regulate the number and timetable of research projects, so as not to disrupt the normal functioning of the host institution or unit; and

6. Determine if the research is subject to the human research review provisions within the Code of Virginia.

§ 2.4. Administrative review.

After initial review, the Research and Planning Unit shall send a copy of the research proposal, including project endorsement(s) from participating operating unit(s) within the department, to the appropriate chief of operations or regional administrator and deputy directors for review. The Research and Planning Unit shall then forward the research proposal, all review comments, and if applicable, Human Research Review Committee recommendation, to the director (or designee) for the final review and decision.

§ 2.5. Data research proposals.

The Manager of the Research and Planning Unit shall review data research proposals within 30 days of receipt of all required forms and documentation. The manager's review shall include consultation with the appropriate deputy director and chief of operations, and with the operating unit(s) supplying the data. The director (or designee) shall approve or deny the proposal within 30 days of receipt of the manager's recommendation.

§ 2.6. Human research proposals.

The Manager of the Research and Planning Unit shall review human research proposals within 30 days of receipt of all required forms and documentation. The manager's review shall include consultation with appropriate deputy director and chief of operations, and with the operating unit(s) where the research will be conducted. The department's Human Research Committee will review the proposal at its next scheduled meeting following completion of the manager's review. The committee may deny, approve, conditionally approve or request additional information about the proposal. The latter two actions require additional action by the researcher(s) prior to a recommendation by the committee. The director (or designee) shall approve or deny the proposal within 30 days of receipt of the committee's recommendation.

Article 3.
Research Agreement.

§ 2.7. Written Research Agreement.

A written Research Agreement must be signed and submitted with the Research Proposal Summary indicating that the principal researcher and research staff have read, understand, and agree to abide by these regulations.

§ 2.8. Projected time frames.

This agreement shall set forth the projected time frames of the department's involvement and the projected dates the researcher shall submit progress reports and the final report to the Manager of the Research and Planning Unit.

§ 2.9. Academic research.

In the case of student research, the researcher's academic advisor also must sign the research agreement.

§ 2.10. Departmental requirements.

Department participation in this agreement shall occur only when procedural and applicable human research reviews are completed and the director (or designee) signs the agreement on behalf of the department. The Manager of the Research and Planning Unit must forward a copy of the signed Research Agreement to the researcher before the project may begin.

Article 4.
Research Standards.

§ 2.11. Credentials.

The principal researcher shall have academic or professional standing in the pertinent field or job-related experience in the areas of study or be directly supervised by such a person.

§ 2.12. Ethics.

The research shall conform to the standards of ethics of professional societies such as the American Correctional Association, the American Psychological Association, the American Sociological Association, the National Association of Social Workers, or their equivalent.

§ 2.13. Protection of rights.

The principal researcher is responsible for their staff's conduct and assumes the responsibility for the protection of the rights of subjects involved in the project.

§ 2.14. Confidentiality.

Information given by clients and employees of the department to the researcher shall be kept confidential. Confidentiality does not preclude the reporting of results in consolidated form that protects the identity of individuals nor the giving of raw data to the Research and Planning Unit for possible further analysis. The confidentiality of any such raw data shall be monitored by the Research and Planning Unit. Persons who breach confidentiality shall be subject to sanctions in accordance with applicable laws, policies, and procedures.

§ 2.15. Client incentives.

The opportunity to participate in research is considered sufficient incentive for client participation, and the offering of additional incentives is discouraged. However, when such incentives are offered, they shall be appropriate to the subjects' custodial status so as not to offer compensation which would be disproportionate to the situation.

Article 5.
Human Research Review Committee.

§ 2.16. Legal base.

The Department of Youth and Family Services shall establish a human research review committee ("the committee") pursuant to § 32.1-162.19 of the Code of Virginia.

§ 2.17. Committee purpose.

The committee shall advise the the department on matters of human research, and shall review and recommend human research proposals to the director in

accordance with applicable laws, regulations, policies and procedures.

§ 2.18. Committee responsibilities.

No human research shall be conducted or authorized by the Department of Youth and Family Services unless the committee has reviewed and approved the proposed human research project giving consideration to:

1. The potential benefits and risks involved;

2. The adequacy of the methodology of the research;

3. If the research is nontherapeutic, whether it presents more than a minimal risk to the human subjects;

4. Whether the rights and welfare of the human subjects involved are adequately protected;

5. Whether the risks to the human subjects are outweighed by the potential benefits to them;

6. Whether the informed consent is to be obtained by methods that are adequate and appropriate, and whether the written consent form is adequate in both content and language for the participants to understand;

7. Whether the persons proposing to conduct the particular human research are appropriately competent and qualified;

8. Whether the criteria for selecting subjects are valid and equitable; and

9. Whether the research complies with the requirements of these regulations and with any other requirements as established by the department.

§ 2.19. Expedited review: conditions.

The committee may conduct an expedited review of a proposed human research project which involves no more than minimal risk to the subjects if:

1. Another institution's or agency's human research review committee has reviewed and approved the project; or

2. The review involves only minor changes in previously approved research and the changes occur during the approved project period.

§ 2.20. Expedited review: procedures.

The researcher must request an expedited review and recommendation before a regularly scheduled committee meeting. The expedited review begins with distribution of the research proposal to committee members. Within five working days the chairperson will contact each committee member for their opinion and decision. A majority of four is required to recommend approval or denial to the director of the department.

§ 2.21. Committee selection and composition.

The committee shall consist of seven members representing varied backgrounds, to ensure the competent, complete, and professional review of human research activities conducted by, proposed to or authorized by the department. Permanent members shall include the Manager of the department's Research and Planning Unit, who shall serve as committee chair, and the Chief Psychologist of the department's Behavioral Services Unit. The director (or designee) shall appoint the remaining members for terms of two years. Committee members may be reappointed to successive terms.

§ 2.22. Diversity of membership.

At least three members must be individuals who are not otherwise associated with the department. At least one member must be from a nonscientific profession (e.g., lawyer, ethicist or clergyperson). At least one member shall have the background and experience to advocate for the welfare of the human research subjects.

§ 2.23. Restriction on committee members.

No member of the committee shall be directly involved in the proposed human research or have administrative approval authority over the proposed human research except in connection with his responsibilities as a member of the committee.

§ 2.24. Committee meetings.

A quorum of the committee shall meet monthly as necessary (generally the first Monday). Four or more members of the committee constitute a quorum. Proposals are mailed to committee members 10 working days before a scheduled meeting. Additional committee meetings may be called by the chairperson.

§ 2.25. Committee action.

The committee shall take action on every proposal presented at a meeting. By majority vote of the members present, the committee may:

1. Recommend that the director unconditionally approve the research proposal;

2. Disapprove the research proposal. The Manager of the Research and Planning Unit shall notify the researcher and the director of the committee's action;

3. Recommend that the director approve the research proposal provided the researcher complies with certain conditions set forth by the committee. The

Manager of the Research and Planning Unit will determine that the conditions have been met before forwarding the committee's recommendation to the director;

4. Request additional information about the research proposal before voting on a final recommendation. The researcher is responsible for supplying any additional information and, if necessary, meeting with the committee.

§ 2.30. Annual review.

All approved and ongoing human research projects shall be reviewed at least annually to ensure conformity with the approved proposals.

§ 2.31. Outside experts.

The committee may invite persons with pertinent expertise and competence to assist in the review of any project as an aid to the decision-making process. These persons, however, may not vote.

§ 2.32. Reimbursement of expenses.

The Department of Youth and Family Services shall reimburse nondepartmental committee members for all reasonable mileage and parking expenses incurred as a result of committee membership.

§ 2.33. Committee reports required.

The committee shall submit to the Governor, the General Assembly, the Board of Youth and Family Services and the director or his designee at least annually a report on human research projects reviewed and approved by the committee, including any significant deviations from the proposals as approved.

§ 2.34. Committee compliance with statute.

The committee rules and procedures of operations shall comply with the human research regulations set forth by the Code of Virginia.

PART III.
CONSENT OF PARTICIPANT.

§ 3.1. Competent individuals.

In order to conduct human research of a competent individual, informed consent must be subscribed to in writing by the person and witnessed.

§ 3.2. Individuals who are not competent.

In order to conduct human research of a person who is not competent at the time consent is required, informed consent shall be subscribed to in writing by the person's legally authorized representative and witnessed.

§ 3.3. Minors.

In order to conduct human research of a minor who is otherwise capable of giving informed consent, informed consent shall be subscribed to in writing by both the minor and his legally authorized representative.

§ 3.4. Limits of legally authorized representatives.

A. Notwithstanding consent by a legally authorized representative, no person who is otherwise capable of giving informed consent shall be forced to participate in any human research.

B. A legally authorized representative may not consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minimal risk to the human subject.

§ 3.5. Consent form.

No informed consent form shall include any language through which the human subject waives or appears to waive any of his legal rights, including any release of any individual, institution, or agency or any agents thereof from liability for negligence.

§ 3.6. Committee review.

The committee shall review and approve the consent process and all required consent forms for each proposed human research project before recommending approval to the director.

§ 3.7. Exceptions permitted.

The committee may approve a consent procedure which omits or alters some or all of the basic elements of informed consent, or waives the requirement to obtain informed consent, if the committee finds and documents that:

1. The research involves no more than a minimal risk to the subjects;

2. The omission, alteration or waiver will not adversely affect the rights and welfare of the subjects;

3. The research could not practicably be performed without the omission, alteration or waiver; and

4. After participation, the subjects are to be given additional pertinent information, whenever appropriate.

§ 3.8. Waiver of written consent.

The committee may waive the requirement that the researcher obtain written informed consent for some or all subjects, if the committee finds that the only record linking the subject and the research would be the consent

document and the principal risk would be potential harm resulting from a breach of confidentiality. The committee may require the researcher to provide the subjects and legally authorized representatives with a written statement explaining the research. Further, each subject shall be asked whether he wants documentation linking him to the research and the subject's wishes shall govern.

PART IV.
RESEARCH FINDINGS.

§ 4.1. Progress reports.

The Department of Youth and Family Services may require periodic reports from the principal researcher of each research project to ensure that the project is being carried out in conformity with the proposal as approved.

§ 4.2. Department use of information.

The Department of Youth and Family Services shall be permitted to use the data collected in the research project and to reproduce the materials, as they are published, for official department use only.

§ 4.3. Final report.

Two copies of the final report must be submitted to the Manager of the Research and Planning Unit. One copy shall be retained by the Research and Planning Unit with distribution to the director, members of the Human Research Review Committee, and other persons as appropriate. The second copy shall be forwarded by the Research and Planning Unit to the appropriate deputy director, who may share it with the participating operating unit(s).

§ 4.4. Disclaimer.

Acknowledgement shall include a statement qualifying the participation of the department so as not to imply approval or endorsement of the publication.

VA.R. Doc. No. R94-329; Filed December 8, 1993, 10:55 a.m.

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 CRIMINAL JUSTICE SERVICES (BOARD OF)

Title of Regulation: **VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.**

Statutory Authority: §§ 9-170 and 9-184 through 9-196 of the Code of Virginia.

Effective Date: February 1, 1994.

Summary:

The amendments permit use of nondedicated telecommunication lines to access criminal history record information in limited, but secure, circumstances. Exceptions to the current requirement for use of dedicated telecommunication lines for data transmission would be granted on an exceptional basis provided that documented policies and procedures ensure that access to criminal history record information is limited to authorized users. The changes result from requests of authorized users for cost-effective access to criminal history record information stored in electronic data systems.

There have been no substantial changes in the regulation since it was published in its proposed form. Nonsubstantive changes include one provision for tightening the security regarding access of criminal history record information. The current regulation states that appropriate identification of the remote access device operator may be required; the revised language stipulates that appropriate identification of the remote access device operator shall be required.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Paula Scott Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000. There may be a charge for copies.

VR 240-02-1. Regulations Relating to Criminal History Record Information Use and Security.

PART I.
GENERAL.

Pursuant to the provisions of §§ 9-170(1), 9-170(15), 9-170(16), 9-170(17), 9-170 21 and §§ 9-184 through 9-196 of the Code of Virginia, the Criminal Justice Services Board hereby promulgates the following regulations relating to Criminal History Record Information Use and Security.

The purpose of these regulations is to assure that state and local criminal justice agencies maintaining criminal history record information establish required record keeping procedures to ensure that criminal history record information is accurate, complete, timely, electronically and physically secure, and disseminated only in accordance with federal and state legislation and regulations. Agencies may implement specific procedures appropriate to their particular systems, but at a minimum shall abide by the requirements outlined herein.

§ 1.1. Definitions.

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

"Access" means the ability to obtain, directly or through an intermediary, criminal history record information contained in manual or automated files.

"Board" means the Criminal Justice Services Board , as defined in § 9-168 of the Code of Virginia.

"Central Criminal Records Exchange (CCRE)" means the repository in this Commonwealth which receives, identifies, maintains, and disseminates individual criminal history records, in accordance with § 9-170 22 of the Code of Virginia.

"Conviction data" means information in the custody of any criminal justice agency relating to a judgement of conviction, and the consequences arising therefrom, in any court.

"Correctional status information" means records and data concerning each condition of a convicted person's custodial status, including probation, confinement, work release, study release, escape, or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal charges and any disposition arising

therefrom. The term shall not include juvenile record information which is controlled by Chapter 11 (§ 16.1-226 et seq.), of Title 16.1 of the Code of Virginia, criminal justice investigative information, or correctional status information.

"Criminal history record information area" means any office, room, or space in which criminal history record information is regularly collected, processed, stored, or disseminated to an authorized user. This area includes computer rooms, computer terminal workstations, file rooms and any other rooms or space in which the above activities are carried out.

"Criminal intelligence information" means information on identifiable individuals compiled in an effort to anticipate, prevent or monitor possible criminal activity.

"Criminal investigative information" means information on identifiable individuals compiled in the course of the investigation of specific criminal acts.

"Criminal justice agency" means a court or any other governmental agency or subunit thereof which as its principal function performs the administration of criminal justice and any other agency or subunit thereof which performs criminal justice activities.

"Criminal justice information system" means a system including the equipment, facilities, procedures, agreements, and organizations thereof, which is used for the collection, processing, preservation or dissemination of criminal history record information. The operations of the system may be performed manually or by using electronic computers or other automated data processing equipment.

"Department" means the Department of Criminal Justice Services.

"Destroy" means to totally eliminate and eradicate by various methods, including, but not limited to, shredding, incinerating, or pulping.

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

"Dissemination" means any transfer of information, whether orally, in writing, or by electronic means. The term does not include access to the information by officers or employees of a criminal justice agency maintaining the information who have both a need and a right to know the information.

"Expunge" means to remove, in accordance with a court order, a criminal history record, or a portion of a record, from public inspection or normal access.

"Modify" means to add or delete information from a record to accurately reflect the reported facts of an individual's criminal history record. (See § 9-192(C) of the Code of Virginia.) This includes eradicating, supplementing, updating, and correcting inaccurate and erroneous information.

"Seal" means to physically prevent access to a criminal history record, or portion of a criminal history record.

PART II.
CRIMINAL HISTORY RECORD INFORMATION USE.

§ 2.1. Applicability.

These regulations govern originals and copies of manual or automated criminal history record information which are used, collected, stored or disseminated by a state or local criminal justice agencies or other agencies receiving criminal history record information in the Commonwealth. The regulations also set forth the required procedures that ensure the proper processing of the expungement of criminal history record information. The provisions of these regulations apply to the following groups, agencies and individuals:

1. State and local criminal justice agencies and subunits of these agencies in the Commonwealth;

2. The United States Government or the government of another state or its political subdivisions which exchange such information with criminal justice agencies in the Commonwealth, but only to the extent of that enchange;

3. Noncriminal justice agencies or individuals who are eligible under the provisions of § 19.2-389 of the Code of Virginia to receive limited criminal history record information.

The provisions of these regulations do not apply to: (i) original or copied records of entry, such as police blotters maintained by a criminal justice agency on a chronological basis and permitted to be made public, but only if such records are not indexed or accessible by name; (ii) offense and dispatch records maintained by a criminal justice agency on a chronological basis and pemitted to be made public, if such records are not indexed or accessible by name or do not contain criminal history record information; (iii) court records of public criminal proceedings, including opinions and published compilations thereof; (iv) records of traffic offenses disseminated to or maintained by the Department of Motor Vehicles for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses; (v) statistical or analytical records or reports in which individuals are not identified and from which their identities are not ascertainable; (vi) announcements of executive clemency; (vii) posters, announcements, or lists for identifying or apprehending fugitives or wanted persons; and (viii) criminal justice intelligence information; or criminal justice investigative information.

Nothing in these regulations shall be construed as prohibiting a criminal justice agency from disclosing to the

public factual information concerning the status of an investigation, the apprehension, arrest, release or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is related to the offense for which the individual is currently within the criminal justice system.

§ 2.2. Collection.

A. Responsibility.

Responsibility for collecting and updating criminal history record information rests with:

1. State officials and criminal justice agencies having the power to arrest, detain, or hold convicted persons in correctional facilities;

2. Sheriffs of cities or counties;

3. Police officials of cities, counties and towns;

4. Other local law-enforcement officers or conservators of the peace who have the power to arrest for a felony (see § 19.2-390 of the Code of Virginia);

5. Clerks of court and court agencies or officers of the court; and

6. Other criminal justice agencies or agencies having criminal justice responsibilities which generate criminal history record information.

B. Reportable offenses.

The above officials and their representatives are required to submit to the Central Criminal Records Exchange, on forms provided by the Central Criminal Records Exchange, a report on every arrest they complete for:

1. Treason;

2. Felonies or offenses punishable as a misdemeanor under Title 54.1 of the Code of Virginia;

3. Class 1 and 2 misdemeanors under Title 18.2 (except an arrest for a violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; violation of Article 2 (§ 18.2-415 of Chapter 9 of Title 18.2, or § 18.2-119; or violation of any similar ordinance of a county, city or town.

In addition to those offenses enumerated above, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or correctional institution.

The chief of police, sheriff, or criminal justice agency head is responsible for establishing a system to ensure that arrest forms are completed and submitted in a timely and accurate fashion.

C. Timelines of submission.

1. Arrests. Arrest reports for all offenses noted above, except as provided in this section, and a fingerprint card for the arrested individual shall be forwarded to the Central Criminal Records Exchange in accordance with the time limits specified by the Department of State Police. A copy of the Central Criminal Records Exchange arrest form shall also be sent to the local court (a copy of the form is provided for the courts) at the same time.

The link between the arrest report and the fingerprint card shall be established according to Central Criminal Records Exchange requirements. Arrests that occur simultaneously for multiple offenses need only be accompanied by one fingerprint card.

2. Nonconvictions. For arrests except as noted in subdivision 3a below, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.

3. Convictions.

a. For persons arrested and released on summonses under § 19.2-74 of the Code of Virginia, the chief law-enforcement officer or his designee, who may be the arresting officer, shall furnish fingerprint cards and a completed copy of the Central Criminal Records Exchange form to the Central Criminal Records Exchange. The form shall be completed immediately upon conviction unless an appeal is noted. In the case of an appeal, officials responsible for reporting the disposition of charges shall report the conviction within 30 days after final action of the case.

b. For arrests except as noted in subdivision 3 a above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurrence of the disposition.

4. Final disposition. State correctional officials shall submit to the Central Criminal Records Exchange the release status of an inmate of the state correctional system within 20 days of the release.

D. Updating and accuracy.

Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely fashion, and always within 30 days,

of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated. In the case of correctional status or release information, correctional officials are responsible for notifying the Central Criminal Records Exchange within the same time limits of updates or changes in correctional status information. Forms for updating and correcting information are provided by the Central Criminal Records Exchange.

Each criminal justice agency is required to supply timely corrections of criminal history record information the agency has provided to a criminal justice or noncriminal justice agency for a period of two years after the date of dissemination.

E. Locally maintained and nonreportable offenses.

Criminal history record information generated by a criminal justice agency and maintained in a locally used and maintained file, including criminal history record information on offenses not required to be reported to the Central Criminal Records Exchange but maintained in local files, as well as criminal history record information maintained by the Central Criminal Records Exchange, shall adhere to the standards of collection, timeliness, updating and accuracy as required by these regulations. Arrests shall be noted and convictions or adjudications recorded within 30 days of court action or the elapse of time to appeal.

§ 2.3. Dissemination.

A. Authorization.

No criminal justice agency or individual shall confirm or deny the existence or nonexistence of a criminal history record to persons or agencies that would not be eligible to receive the information. No dissemination of a criminal history record is to be made to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending.

Criminal history record information or portions of an individual's record both maintained and used by criminal justice agencies and eligible recipients, maintained either at the Central Criminal Records Exchange, or by the originating criminal justice agency, or both, shall only be disseminated as provided by § 19.2-389 of the Code of Virginia.

Upon receipt of a request for criminal history record information, by personal contact, mail, or electronic means from an agency or individual claiming to be authorized to obtain such information, the person responding to the request shall determine whether the requesting agency or individual is authorized to receive criminal history record information.

Criminal justice agencies shall determine what positions in their agency require regular access to criminal history record information as part of their job responsibilities. These positions will be exempt from the dissemination rules below. Use of criminal history record information by a member of a criminal justice agency not occupying a position authorized to receive criminal history record information, or for a purpose or activity other than one for which the person is authorized to receive criminal history record information, will be considered a dissemination and shall meet the provisions of this section. If the user of criminal history record information does not meet the procedures in subsection B, the use of the information will be considered an unauthorized dissemination.

The release of criminal history record information to an individual or entity not included in § 19.2-389 of the Code of Virginia is unlawful and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals authorized to receive the information as outlined in § 19.2-389 of the Code is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in § 2.8 of these regulations. Unlawful dissemination contrary to the provisions of these regulations is also a Class 2 misdemeanor (see § 9-195 of the Code of Virginia).

B. Procedures for responding to requests.

A criminal justice agency disseminating criminal history record information shall adhere to the following regulations:

1. Allowable responses to requests. Local and regional criminal justice agencies may respond to requests for criminal history record information in two ways:

a. For offenses required to be reported to the Central Criminal Records Exchange (CCRE), they may refer the requester to the Central Criminal Records Exchange, which will directly provide the requester with the information, or shall themselves query the Central Criminal Records Exchange to obtain the most accurate and complete information available and provide the information to the requester. (See § 19.2-389 of the Code of Virginia.)

It should be noted that the Code of Virginia provides an exception to the above mentioned procedure for responding to information requests. The local law-enforcement agency may directly provide criminal history record information to the requester without making an inquiry to the Central Criminal Records Exchange or referring the requester to the Central Criminal Records Exchange if the time is of the essence and the normal response time of the exchange would exceed the

necessary time period. (See § 19.2-389 of the Code of Virginia.) Under circumstances where an inquiry to the exchange is not made, the record provided by the local law-enforcement agency should be accompanied by an appropriate disclaimer indicating that the record may not be complete.

b. For nonreportable offenses (those offenses not reported to the Central Criminal Records Exchange), the law-enforcement agency shall provide the information requested, following the dissemination procedures as required by the regulations below.

2. Prior to dissemination. Prior to disseminating criminal history record information a criminal justice agency shall:

a. Verify requester identity.

(1) Individual requester. For an individual requesting his own record and not known to the person responding to the request, the individual shall provide proper identification, to include at least two of the following, one of which must be a photo identification: (i) a valid passport, (ii) drivers' license with photo, (iii) social security card, (iv) birth certificate, or (v) military identification, if there is more than one name match. Fingerprints or other additional information shall be required if the disseminating criminal justice agency deems it appropriate or necessary to ensure a match of the record and the requesting subject.

(2) Criminal justice agencies. For personnel of criminal justice agencies requesting a record, the requester shall provide valid agency identification unless the disseminator recognizes the requesting individual as having previously been authorized to receive the information for the same purpose.

(3) Noncriminal justice agencies or individuals. For an individual requesting the record of another, as in the case of an attorney requesting the record of his client, the individual shall provide a sworn written request from the record subject naming the requester as a recipient, as provided in § 19.2-389A of the Code of Virginia. Identification of the attorney or individual shall also be required unless the attorney or individual is known to the official responding to the request.

b. Verify record subject identity. Because serious harm could come from the matching of criminal history record information to the wrong individual, verification procedures shall be carefully managed, particularly when dissemination will be to noncriminal justice recipients. The following verification methods are the only acceptable methods:

(1) Individual requesters. The verification requirements for individuals requesting their own records and for individual requesters with sworn requests from the subject of the information shall be the same as the requirements for noncriminal justice agencies as described below. Only when information supplied and information in the Central Criminal Records Exchange or local files satisfactorily match shall information be disseminated.

(2) Criminal justice agencies. Criminal history record information which reasonably corresponds to the name, aliases, and physical identity of the subject can be disseminated to a legitimate requester when time is of the essence or if criminal justice interests will be best served by the dissemination. This includes the dissemination of records with similar but not identical name spellings, similar physical characteristics, and similar but not identical aliases. When criminal history record information is obtained in this manner and results in an apparent match between the identity of the subject and the record, the criminal history record should be verified using fingerprint identification prior to prosecution, adjudication or sentencing of the record subject. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange.

(3) Noncriminal justice agencies. Full name, date of birth, race, and sex of the record subject must be provided by the requester for a criminal history record to be disseminated. Fingerprint identification may be required prior to dissemination if there is any doubt as to the match. If a criminal justice agency does not have the capability to classify fingerprints, it may submit them by mail to the Central Criminal Records Exchange. Information supplied by the requester and available through the Central Criminal Records Exchange (or in the local files where the request is for criminal history record information maintained only locally) must match to the satisfaction of the disseminator, or the dissemination shall not be made.

c. Notify requester of costs and restrictions. The official responsible for aiding the requester shall notify the requester of the costs involved and of restrictions generally imposed on use of the data, or be reasonably assured that the requester is familiar with the costs and restrictions, prior to beginning the search for the requested criminal history record information, and shall obtain the consent of the requester to pay any charges associated with the dissemination.

3. Locating and disseminating information requested. Once a request for a criminal history record has been made, and the responsible official is satisfied as to the legitimacy of the request and the identity of the

subject and has informed the requester of costs and restrictions, the responsible official conducting the search for the record shall supply the information after querying the Central Criminal Records Exchange. However, if time is of the essence, or the offenses in a criminal history record are not required to be reported to Central Criminal Records Exchange, the responsible official may directly supply the information (see § 19.2-389 of the Code of Virginia).

4. Instructions regarding dissemination to requesters. The disseminated record must be accompanied by one of the three following messages in printed form, whichever matches the category of the requester:

a. Record subjects. Record subjects have a right to receive and disseminate their own criminal history record information, subject to these regulations and § 19.2-389(11) of the Code of Virginia. If a record subject or his attorney complies with the requirements of these sections, he shall be given the requested criminal history record information. However, if an agency or individual receives a record from the record subject, that agency or individual shall not further disseminate the record. The following printed message shall accompany the criminal history record information disseminated to a record subject:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

b. Criminal justice agencies. The following printed message shall accompany the criminal history record information disseminated to a criminal justice agency:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

c. Noncriminal justice agencies and individuals other than record subjects. Even with the sworn consent of the record subject, only criminal history record information that is conviction data shall be disseminated to a noncriminal justice agency or individual in compliance with the existing laws and shall not be disseminated further. The following printed message shall accompany the criminal history record information disseminated to an individual or a noncriminal justice agency receiving criminal history record information:

"UNAUTHORIZED DISSEMINATION WILL SUBJECT THE DISSEMINATOR TO CRIMINAL AND CIVIL PENALTIES."

5. Maintaining a dissemination log. A record of any dissemination shall be maintained at the disseminating criminal justice agency or shall be accessible electronically for a period of at least two years from the date of the dissemination.

The dissemination log must list all requests for criminal history record information. The log may be automated or manual.

Records will include the following information on each dissemination:

a. Date of inquiry;

b. Requesting agency name and address;

c. Identifying name and number (either FBI or state identification number of record subject, or notification of "no record found");

d. Name of requester within the agency requesting criminal history record information; and

e. Name of disseminator (officer or civilian who provides the criminal history record information to the requester).

6. Reporting unauthorized disseminations. While individual criminal justice agencies are not expected to audit agencies who receive criminal history record information that they provide, in order to identify unauthorized releases, they shall notify the Department of any violations observed of the above dissemination regulations. The department will investigate and respond to the violation in a manner deemed appropriate by the department.

A criminal justice agency which knowingly fails to report a violation may be subject to immediate audit of its entire dissemination log to ensure that disseminations are being appropriately managed.

7. Interstate dissemination. Interstate dissemination of criminal history record information shall be subject to the procedures described herein. Dissemination to an agency outside of the Commonwealth shall be carried out in compliance with Virginia law and these regulations, as if the agency were within the jurisdiction of the Commonwealth.

8. Fees. Criminal justice agencies may charge a reasonable fee for search and copying time expended when dissemination of criminal history record information is requested by a noncriminal justice agency or individual. The criminal justice agency shall post the schedule of fees to be charged, and shall obtain approval from the requester to pay such costs prior to initiating the search.

§ 2.4. Access and review.

A. Who can review.

An individual or his attorney, upon providing proper identification and in the case of an attorney representing a client, with a sworn written request from the record subject, shall have the right to inspect criminal history record information being maintained on that individual by the Central Criminal Records Exchange or other criminal justice agencies. Completing a request form may be required by the Central Criminal Records Exchange or the local criminal justice agency.

B. Review at local law-enforcement agency or central criminal records exchange.

An individual or his attorney may review the individual's criminal history record information arising from arrests for felonies and Class 1 and 2 misdemeanors maintained in the Central Criminal Records Exchange by applying at any law enforcement agency terminal capabilities on the Virginia Criminal Information Network or to the Central Criminal Records Exchange of the Virginia Department of State Police, during normal working hours. An individual or his attorney may review the individual's criminal history record regarding offenses not required to be reported to the Central Criminal Records Exchange at the arresting law-enforcement agency.

The law-enforcement agency to which the request is directed shall inform the individual or his attorney of the procedures associated with the review.

Individuals shall be provided, at cost, one copy of their record. If no record can be found, a statement shall be furnished to this effect.

C. Timeliness and completeness.

An individual requesting his own record shall be advised when the record will be available. In no case shall the time between request and availability of the record exceed one week, except where fingerprint identification is required; then it shall not exceed 30 days. Criminal justice agencies should seek to provide the record as soon as reasonably possible unless there are questions of identification.

The criminal justice agency locating an individual's criminal history record information shall examine its own files and shall contact the Central Criminal Records Exchange for the most up-to-date criminal history record information, and supply both to the requester.

D. Assistance.

The criminal justice agency to which the request is directed shall provide reasonable assistance to the individual or his attorney to help understand the record.

The official releasing the record shall also inform the individual of his right to challenge the record.

§ 2.5. Challenge.

Individuals who desire to challenge their own criminal history record information must complete documentation provided by the criminal justice agency maintaining the record and forward it to the Central Criminal Records Exchange or the criminal justice agency maintaining the record. A duplicate copy of the form and the challenged record may be maintained by the individual initiating the challenge or review. The individual's record concerning arrests for felonies and Class 1 and 2 misdemeanors may be challenged at the Central Criminal Records Exchange or the criminal justice agency maintaining the record. For offenses not required to be reported to the Exchange, the challenge shall be made at the arresting law-enforcement agency or the criminal justice agency maintaining the records.

A challenge will be processed as described below.

A. Record maintained by the Central Criminal Records Exchange.

1. Message flags. If the challenge is made of a record maintained by the Central Criminal Records Exchange, both the manual and the automated record shall be flagged with the message "CHALLENGED RECORD." A challenged record shall carry this message when disseminated while under challenge.

2. Review at exchange. The Central Criminal Records Exchange shall compare the information contained in the repository files as reviewed by the individual with the original arrest or disposition form. If no error is located, the Central Criminal Records Exchange shall forward a copy of the challenge form, a copy of the Central Criminal Records Exchange record and other relevant information to the criminal justice agency or agencies which the Central Criminal Records Exchange records indicate as having originated the information under challenge, and shall request them to examine the relevant files to determine the validity of the challenge.

3. Examination. The criminal justice agency or agencies responsible for originating the challenged record shall conduct an examination of their source data, the contents of the challenge, and information supplied by the Central Criminal Records Exchange for any discrepancies or errors, and shall advise the Central Criminal Records Exchange of the results of the examination.

4. Correction. If any modification of a Central Criminal Records Exchange record is required, the Exchange shall modify the record and shall then notify the criminal justice agency in which the record was originally reviewed of its action, and supply it and other agencies involved in the review with a copy of the corrected record.

5. Notification by Central Criminal Records Exchange. The Central Criminal Records Exchange shall also provide notification of the correction to all recipients of the record within the last 24 months.

6. Notification by other criminal justice agencies. Criminal justice agencies which have disseminated an erroneous or incomplete record shall in turn notify agencies which have received the disseminated record or portion of the record in the last two years from the date of the Central Criminal Records Exchange modifications of the records. Notification shall consist of sending a copy of the original record, and corrections made, to the recipients of the erroneous record noted in the dissemination log for the two-year period prior to the date of correction by the Central Criminal Records Exchange. (See § 9-192 C of the Code of Virginia.) The criminal justice agency in which the review and challenge occurred shall notify the individual or his attorney of the action of Central Criminal Records Exchange.

7. Appeal. The record subject or his attorney, upon being told of the results of his record review, shall also be informed of his right to review and appeal those results.

B. Record maintained by a criminal justice agency other than the central Criminal Records Exchange.

1. Message flags. If a challenge is made of a record maintained by a criminal justice agency, both the manaul and the automated record shall be flagged with the message "CHALLENGED RECORD." A disseminated record shall contain this message while under challenge.

2. Examination and correction agency. If the challenged record pertains to the criminal justice agency's arrest information, the arresting agency shall examine the relevant files to determine the vailidity of the challenge. If the review demonstrates that modification is in order, the modification shall be completed and the erroneous information destroyed. If the challenged record pertains to the disposition information, the arresting agency shall compare contents of the challenge with information originally supplied by the clerk of the court.

3. Review by Clerk of Court. If no error is found in the criminal justice agency's records, the arresting agency shall forward the challenge to the clerk of the court that submitted the original disposition. The Clerk of the Court shall examine the court records pursuant to the challenge and shall, in turn, notify the arresting agency of its findings. The arresting agency shall then proceed as described in Subsection B.2 of this section.

4. Notification. The criminal justice agency in which the challenge occurred shall notify the individual or his attorney of the action taken, and shall notify the Central Criminal Records Exchange and other criminal justice agencies receiving the erroneous information of the necessary corrections if required, as well as the noncriminal justice agencies to which it has distributed the information in the last 24 months, as noted in its dissemination log.

5. Correction. The Central Criminal Records Exchange will correct its records, and notify agencies that received erroneous information within the past 24 months. The agencies will be requested to correct their files and to notify agencies which have the disseminated information, as provided in subsection A.6 of this section.

6. Appeal. The record subject or his attorney, upon receiving the results of the record review, shall be informed of the right to review and appeal.

C. Administrative review of challenge results.

1. Review by criminal justice agency head. After the aforementioned review and challenge concerning a record either in the Central Criminal Records Exchange or another criminal justice agency, the individual or his attorney may, within 30 days, request in writing that the head of the criminal justice agency in which the challenge was made, review the challenge if the individual is not satisfied with the results of the review and challenge.

2. Thirty-day review. The criminal justice agency head or his designated official shall review the challenge by reviewing the action taken by the agency, the Central Criminal Records Exchange, and other criminal justice agencies, and shall notify the individual or his attorney in writing of the decision within 30 days of the receipt of the written request to review the challenge. The criminal justice agency head shall also notify the individual of the option to request an administrative appeal through the department within 30 days of the postmarked date of the notification of the decision. This notification of the appeal shall include the address of the Department of Criminal Justice Services.

3. Correction and notification. If required, correction and notification shall follow the procedures outlined in subsections A and B of this section.

4. Notification of the department. A copy of the notice required in subsection C 2 of this section shall be forwarded to the department by the criminal justice agency at the same time it is provided to the individual.

D. Administrative appeal.

1. Departmental assessment. The individual or his attorney challenging his record, within 30 days of the postmark of his notification of the decision of the

administrative review, may request that the Director of the Department of Criminal Justice Services review the challenge and conduct an informal hearing. The director may designate a hearing officer for this purpose.

2. Determination of merits of case. The director of his designee shall contact the criminal justice agencies involved and request any and all information needed. Criminal justice agencies shall supply the information requested in a timely manner, to allow the department to respond to the individual within 30 days. The director will then rule on the merits of a hearing and notify the individual or his attorney that such hearing will or will not be held.

3. Hearing. The hearing, if held, shall be conducted within 30 days of the receipt of the request, and the decision of the hearing officer communicated to the individual or his attorney within 30 days of the hearing.

4. Finding. If the director or the hearing officer determines that correction and modification of the records are required, correction of the record and notification of all involved parties shall proceed according to the procedures outlined in subsections A and B of this section.

5. Removal of a challenge designation. When records and relevant action taken by the criminal justice agencies involved are deemed to be correct, the department shall notify the affected criminal justice agencies to remove the challenge designation from their files.

E. Department notification following corrections.

For audit purposes, the Central Criminal Records Exchange shall annually forward the names and addresses of the agencies which originated erroneous record information or received erroneous information from the exchange in that year to the Department of Criminal Justice Services.

§ 2.6. Expungement and sealing.

A. Responsiblity of the director.

The expungement of a criminal history record or portion thereof is only permitted on the basis of a court order. Upon receipt of a court order, petition and other supporting documents for the expungement of a criminal history record, the director of the department, pursuant to § 19.2-392.2 of the Code of Virginia, shall by letter with an enclosed copy of the order, direct the Central Criminal Records Exchange and those agencies and individuals known to maintain or to have obtained such a record, to remove the electronic or manual record or portion thereof from its repository and place it in a physically sealed, separate file. The file shall be properly indexed to allow for later retrieval of the record if required by court order, and the record shall be labeled with the following designation: "EXPUNGED RECORD TO BE UNSEALED ONLY BY COURT ORDER."

B. Responsibility of agencies with a record to be expunged.

The record named in the department's letter shall be removed from normal access. The expunged information shall be sealed but remain available, as the courts may call for its reopening at a later date. (See § 19.2-392.3 of the Code of Virginia.) Access to the record shall be possible only through a name index of expunged records maintained either with the expunged records or in a manner that will allow subsequent retrieval of the expunged record as may be required by the court or as part of the department's audit procedures. Should the name index make reference to the expunged record, it shall be apart from normally accessed files.

C. Procedure for expungement and sealing of hard copy records.

1. The expungement and sealing of hard copy original records of entry (arrest forms) is accomplished by physically removing them from a file, and filing them in a physically secure location elsewhere, apart from normally accessed files. This file should be used only for expunged records and should be accessible only to the manager of records.

2. If the information to be expunged is included among other information that has not been expunged on the same form or piece of paper, the expunged information shall be obliterated on the original or the orginal shall be retyped eliminating the expunged information. The expunged information shall then be placed in the file for expunged records, in its original or copied form, and shall be accessible only to the manager of records.

3. If the expunged information is located on a criminal history record provided by the Central Criminal Records Exchange (i.e., "RAP sheet"), the criminal history record information shall be destroyed, and a new copy, not containing the expunged data, shall be obtained when necessary.

D. Procedure for expunging automated records.

Should the record to be expunged be maintained in an automated system, the Central Criminal Record Exchange or the agency known to possess such a record shall copy the automated record onto an off-line medium such as tape, disk or hard copy printouts. The expunged record, regardless of the type of medium on which it is maintained, shall then be kept in a file used for expunged records and sealed from normal use, accessible only to the manager of records. No notification that expunged data exists shall be left in the normally accessed files.

E. Department to be notified following expungement.

Upon receipt of a request from the department to expunge and seal a record, the affected agency or agencies shall perform the steps above, and notify the department of their action in writing within 120 days of their receipt of the request.

F. Expungement order not received by department.

Should a court ordered expungement be directed to a criminal justice agency other than the department, the directed criminal justice agency shall comply as outlined herein and advise the director without delay of such order. The director shall, upon receipt of such notification, obtain a copy of the order from the appropriate circuit court.

§ 2.7. Audit.

The department shall annually conduct an audit of a random representative sample of state and local criminal justice agencies to ensure and verify adherence to these regulations and to ensure that criminal history records are accurate and complete.

The audits may include, but will not be limited to: (i) examination of record accuracy, (ii) completeness, (iii) timely submission of information, (iv) evidence of dissemination limitation and adequate dissemination logs, (v) security provisions, (vi) evidence of notification of the individual's right of access and challenge, (vii) appropriate handling of record challenges, (viii) timely modification of erroneous records, (ix) evidence of timely notifications of required changes, and (x) appropriate notifications of the department as required.

§ 2.8. Administrative sanctions.

Discovery of violations or failure to comply with these regulations in whole or in part will occasion the following sanctions. Additional criminal penalties and other sanctions may be invoked as provided in § 2.3 should the violation involve an unauthorized dissemination.

A. Law-enforcement agencies.

1. Should a law-enforcement agency fail to comply with these regulations, a letter will be forwarded by the Department to either the chief or police or sheriff, citing the problem and notifying the police department or the sheriff's department that the matter will be referred to the chief official of the locality or commonwealth's attorney, respectively, if a satisfactory result is not forthcoming. The criminal justice agency shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the offices of the city, county or town manager or the local commonwealth's attorney requesting resolution of the matter within 30 days.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the department, the matter will be referred to the Criminal Justice Services Board and the Office of the Attorney General for action.

B. Courts.

1. Should a court or officer of the court fail to comply with these regulations, a letter will be forwarded by the department to the court, citing the problem and notifying the court clerk that the matter will be referred to the chief judge of the locality and the local commonwealth's attorney if a satisfactory result is not forthcoming. The court shall have 10 working days to respond with a letter describing how the situation was remedied or explaining why there is no need to do so.

2. Should there be no satisfactory response after the 10 working day period, the matter will be referred to the chief judge requesting resolution of the matter within 30 days. The Executive Secretary of the Supreme Court of Virginia will also be notified.

3. If 30 days have passed and the matter fails to be resolved to the satisfaction of the department, the matter will be referred to the Criminal Justice Services Board and the Chief Justice of Virginia.

PART III.
CRIMINAL HISTORY RECORD INFORMATION SECURITY.

§ 3.1. Applicability.

These regulations are applicable to criminal justice information systems operated within the Commonwealth of Virginia. These regulations on security are not applicable to court records or other records expressly excluded by § 9-184, B of the Code of Virginia.

These regulations establish a minimum set of security standards which shall apply to any manual or automated recordkeeping system which collects, stores, processes, or disseminates criminal history record information.

Where individuals or noncriminal justice agencies are authorized to have direct access to criminal history record information pursuant to a specific agreement with a criminal justice agency to provide service required for the administration of criminal justice, the service support agreement will embody the restrictions on dissemination and the security requirements contained in these regulations and the Code of Virginia.

§ 3.2. Responsibilities.

In addition to those responsibilities mandated by state and federal laws, the Department of State Police shall have the responsibility for the implementation of these regulations in regard to the operation of the Central Criminal Records Exchange.

The implementation of these regulations, except as set forth in the above paragraph, shall be the responsibility of the criminal justice agency as designated and authorized by the county or municipality in cases of political subdivisions. Nothing in these regulations shall be deemed to affect in any way the exercise of responsibility conferred on counties and municipalities of the state under Title 15.1 of the Code of Virginia. The determination of the suitability of the actual procedures instituted by the criminal justice agency will be the subject of study in any audit by the department, mandated by § 9-186 of the Code of Virginia.

§ 3.3. Physical access.

Access to areas in which criminal history record information is collected, stored, processed or disseminated shall be limited to authorized persons. Control of access shall be ensured through the use of locks, guards or other appropriate means. Authorized personnel shall be clearly indentified.

Procedures shall be established to detect an unauthorized attempt or access. Furthermore, a procedure shall be established to be followed in those cases in which an attempt or unauthorized access is detected. Such procedures shall become part of the orientation of employees working in criminal history record information area(s) and shall be reviewed periodically to ensure their effectiveness.

Criminal justice agencies shall provide direct access to criminal history record information only to authorized officers or employees of a criminal justice agency and, as necessary, other authorized personnel essential to the proper operation of the criminal history record information system.

Criminal justice agencies shall institute, where computer processing is not utilized, procedures to ensure that an individual or agency authorized to have direct access is responsible for: (i) the physical security of criminal history record information under its control or in its custody, and (ii) the protection of such information from unauthorized access, disclosure or dissemination.

Procedures shall be instituted to protect any central repository of criminal history record information from unauthorized access, theft, sabotage, fire, flood, wind or other natural or man-made disasters.

For criminal justice agencies that have their criminal history files automated, it is highly recommended that "backup" copies of criminal history information be maintained, preferably off-site. Further, for larger criminal justice agencies having automated systems, it is recommended that the criminal justice agencies develop a disaster recovery plan. The plan should be available for inspection and review by the department.

System specifications and documentation shall be carefully controlled to prevent unauthorized access and dissemination.

§ 3.4. Personnel.

In accordance with applicable law, ordinances, and regulations, the criminal justice agency shall:

A. Screen and have the right to reject for employment, based on good cause, personnel to be authorized to have direct access to criminal history record information;

B. Have the right to initiate or cause to be initiated administrative action leading to the transfer or removal of personnel authorized to have direct access to this information where these personnel violate the provisions of these regulations or other security requirements established for the collection, storage, or dissemination of criminal history record information; and

C. Ensure that employees working with or having access to criminal history record information shall be made familiar with the substance and intent of these regulations. Designated employees shall be briefed on their roles and responsibilities in protecting the information resources in the criminal justice agency. Special procedures connected with security shall be reviewed periodically to ensure their relevance and continuing effectiveness.

§ 3.5. Telecommunications.

Direct or remote access to computer systems for the purpose of accessing criminal history record information shall require that the direct or remote access device use dedicated telecommunication lines. The use of any nondedicated means of data transmission to access criminal history record information shall generally be prohibited. Exceptions may be granted for systems which obtain expressed approval of the department based on a determination that the system has adequate and verifiable policies and procedures in place to ensure that access to criminal history record information is limited to authorized system users. The Department of State Police shall further approve of any access to the Virginia Criminal Information Network (VCIN), in accordance with State Police regulations governing the network. Nothing in this regulation shall be construed to affect the authority of the Department of State Police to regulate access to VCIN.

In those systems where ~~terminal~~ *remote* access of criminal history record information is permitted, ~~terminal~~ *remote access* devices must be secure. ~~Terminal~~ *Remote access* devices capable of receiving or transmitting criminal history record information shall be attended during periods of operation. In cases in which the ~~termina~~

remote access device is unattended, the device shall, through security means, be made inoperable , *for purposes of accessing criminal history record information* .

Telecommunications facilities used in connection with the ~~terminal~~ *remote access device* shall also be secured. The ~~terminal~~ *remote access* device shall be identified on a hardware basis to the host computer. In addition, appropriate identification of the ~~terminal~~ *remote access device* operator [~~may~~ *shall*] be required. Equipment associated with the ~~terminal~~ *remote access* device shall be reasonably protected from possible tampering or tapping. ~~In cases in which a computer system provides terminal access to criminal history record information, the use of dial-up lines shall be prohibited to access criminal history record information.~~

§ 3.6. Computer operations.

Where computerized data processsing is employed, effective and technologically advanced software and hardware design shall be instituted to prevent unauthorized access to this information.

Computer operations, whether dedicated or shared, which support criminal justice information systems shall operate in accordance with procedures developed or approved by the participating criminal justice agencies.

Criminal history record information shall be stored by the computer in such a manner that it cannot be modified, destroyed, accessed, changed, purged or overlaid in any fashion by noncriminal justice terminals.

Operational programs shall be used that will prohibit inquiry, record updates, or destruction of records, from terminals other than criminal justice system terminals which are so designated.

The destruction of record shall be limited to designated terminals under the direct control of the criminal justice agency responsible for creating or storing the criminal history record information.

Operational programs shall be used to detect and log all unauthorized attempts to penetrate criminal history record information systems, programs, or files.

Programs designed for the purpose of prohibiting unauthorized inquiries, unauthorized record updates, unauthorized destruction of records, or for the detection and logging of unauthorized attempts to penetrate criminal history record information systems shall be known only to the criminal justice agency employees responsible for criminal history record information system control or individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide such security programs. The program(s) shall be kept under maximum security conditions.

Criminal justice agencies having automated criminal history record files should designate a system administrator to maintain and control authorized user accounts, system management, and the implementation of security measures.

The criminal justice agency shall have the right to audit, monitor, and inspect procedures established pursuant to these rules and regulations.

§ ~~3.7. Effective date.~~

~~These regulations shall be effective on January 1, 1990, and until amended or rescinded.~~

§ ~~3.8. Adopted:~~

~~July 27, 1977~~

§ ~~3.9. Amended:~~

~~April 20, 1978~~

~~April 10, 1981~~

~~September 6, 1983~~

~~January 8, 1986~~

~~October 4, 1989~~

VA.R. Doc. No. R94-312; December 7, 1993, 2:48 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

REGISTRAR'S NOTICE: This regulation is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:7.1 C 4(a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **State Plan for Medical Assistance Relating to Recipient Savings Account Exemption. VR 460-03-2.6108.2. More Liberal Methods of Treating Resources under § 1902(r)(2) of the Act.**

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

Effective Date: January 26, 1994.

Summary:

The section of the State Plan for Medical Assistance affected by this action is Eligibility Conditions and Requirements, More Liberal Methods of Treating Resources under § 1902(r)(2) of the Act (Attachment

2.6-A, Supplement 8b).

Prior to HB 1502, savings accounts, created and maintained for any purpose, were included in the eligibility computation for ADC, and therefore, Medicaid. This policy precluded a recipient from saving money for educational or home buying purposes.

HB 1502 exempted from Medicaid eligibility computation up to $5,000 of funds placed in a savings account if such funds were saved for the purpose of paying for tuition, books and incidental expenses at any public elementary, secondary or vocational school or any college or university or for making a down payment on a primary residence.

Implementation of this Medicaid eligibility expansion had been delayed pending the receipt, by the Commonwealth, of necessary federal approval of a waiver of Title IV-A of the Social Security Act eligibility provisions. The Department of Social Services, the agency responsible for administering the ADC program (Title IV-A of the Act), received the necessary federal approval dated November 23, 1993.

VR 460-03-2.6108.2. More Liberal Methods of Treating Resources under§ 1902(r)(2) of the Act.

☒ § 1902(f) State ..... ☐ Non-§ 1902(f) State

§ 1. Resources to meet burial expenses.

Resources set aside to meet the burial expenses of an applicant/recipient or that individual's spouse are excluded from countable assets. In determining eligibility for benefits for medically needy individuals, disregarded from countable resources is an amount not in excess of $2,500 for the individual and an amount not in excess of $2,500 for his spouse when such resources have been set aside to meet the burial expenses of the individual or his spouse. The amount disregarded shall be reduced by:

~~A.~~ *1.* The face value of life insurance on the life of an individual owned by the individual or his spouse if the cash surrender value of such policies has been excluded from countable resources; and

~~B.~~ *2.* The amount of any other revocable or irrevocable trust, contract, or other arrangement specifically designated for the purpose of meeting the individual's or his spouse's burial expenses.

§ 2. Life rights.

Life rights to real property are not counted as a resource.

§ 3. Reasonable effort to sell.

A. For purposes of this section "current market value" is defined as the current tax assessed value. If the property is listed by a realtor, then the realtor may list it at an amount higher than the tax assessed value. In no event, however, shall the realtor's list price exceed 150% of the assessed value.

B. A reasonable effort to sell is considered to have been made:

1. As of the date the property becomes subject to a realtor's listing agreement if:

a. It is listed at a price at current market value, and

b. The listing realtor verifies that it is unlikely to sell within 90 days of listing given the particular circumstances involved (e.g., owner's fractional interest; zoning restrictions; poor topography; absence of road frontage or access; absence of improvements; clouds on title, right of way or easement; local market conditions);

2. When at least two realtors refuse to list the property. The reason for refusal must be that the property is unsaleable at current market value. Other reasons for refusal are not sufficient; or

3. When the applicant has personally advertised his property at or below current market value for 90 days by use of a "Sale By Owner" sign located on the property and by other reasonable efforts such as newspaper advertisements, or reasonable inquiries with all adjoining landowners or other potential interested purchasers.

C. Notwithstanding the fact that the recipient made a reasonable effort to sell the property and failed to sell it, and although the recipient has become eligible, the recipient must make a continuing reasonable effort to sell by:

1. Repeatedly renewing any initial listing agreement until the property is sold. If the list price was initially higher than the tax-assessed value, the listed sales price must be reduced after 12 months to no more than 100% of the tax-assessed value.

2. In the case where at least two realtors have refused to list the property, the recipient must personally try to sell the property by efforts described in *subdivision* B 3 ~~above~~ *of this section* , for 12 months.

3. In the case of recipient who has personally advertised his property for a year without success (the newspaper advertisements, "for sale" sign, do not have to be continuous; these efforts must be done for at least 90 days within a 12 month period), the recipient must then

a. Subject his property to a realtor's listing agreement at price or below current market value; or

b. Meet the requirements of *subdivision* B 2 ~~above~~ *of this section* which are that the recipient must try to list the property and at least two realtors refuse to list it because it is unsaleable at current market value; other reasons for refusal to list are not sufficient.

D. If the recipient has made a continuing effort to sell the property for 12 months, then the recipient may sell the property between 75% and 100% of its tax assessed value and such sale shall not result in disqualification under the transfer of property rules. If the recipient requests to sell his property at less than 75% of assessed value, he must submit documentation from the listing realtor, or knowledgeable source if the property is not listed with a realtor, that the requested sale price is the best price the recipient can expect to receive for the property at this time. Sale at such a documented price shall not result in disqualification under the transfer of property rules. The proceeds of the sale will be counted as a resource in determining continuing eligibility.

E. Once the applicant has demonstrated that his property is unsaleable by following the procedures in ~~section B~~ *subsection B of this section* the property is disregarded in determining eligibility starting the first day of the month in which the most recent application was filed, or up to three months prior to this month of application if retroactive coverage is requested and the applicant met all other eligibility requirements in the period. A recipient must continue his reasonable efforts to sell the property as required in Section C above.

§ 4. Automobiles.

Ownership of one motor vehicle does not affect eligibility. If more than one vehicle is owned, the individual's equity in the least valuable vehicle or vehicles must be counted. The value of the vehicles is the wholesale value listed in the National Automobile Dealers Official Used Car Guide (NADA) Book, Eastern Edition. In the event the vehicle is not listed, the value assessed by the locality for tax purposes may be used. The value of the additional motor vehicles is to be counted in relation to the amount of assets that could be liquidated that may be retained.

§ 5. *Life, retirement, and other related types of insurance policies.*

Life, retirement, and other related types of insurance policies with face values totaling $1,500, or less on any one person 21 years old and over are not considered resources. When the face values of such policies of any one person exceeds $1,500, the cash surrender value of the policies is counted as a resource.

§ 6. Resource exemption for Aid to Dependent Children categorically and medically needy.

For ADC-related cases, both categorically and medically needy, any individual or family applying for or receiving assistance may have or establish one interest-bearing savings account per assistance unit not to exceed $5,000 at a financial institution if the applicant, applicants, recipient or recipients designate that the account is reserved for the purpose of paying for tuition, books, and incidental expenses at any elementary, secondary or vocational school or any college or university; or for making down payment on a primary residence. Any funds deposited in the account, and any interest earned thereon, shall be exempt when determining eligibility for medical assistance for so long as the funds and interest remain on deposit in the account. Any amounts withdrawn and used for any of the purposes stated in this section shall be exempt.

VA.R. Doc. No. R94-343; Filed December 8, 1993, 11:57 a.m.

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REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **State Plan for Medical Assistance Relating to Transfer of Assets and Treatment of Certain Assets.**
VR 460-03-2.6109. Transfer of Resources.

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

Effective Date: January 27, 1994.

Summary:

The purpose of this action is to amend the Plan for Medical Assistance concerning the transfer of assets and the treatment of certain trusts by applicants for long-term care services to comply with changes to the Social Security Act. These amendments are necessary to comply with § 1917(c) and (d) of the Social Security Act as mandated by § 13611 of the Omnibus Budget Reconciliation Act of 1993, enacted on August 10, 1993, and are therefore exempt from Article 2 of the Administrative Process Act.

They are required to be effective with payments for medical assistance made on or after October 1, 1993, for transfers of assets and trusts created on or after

the date of enactment, but shall not apply:

1. To medical assistance provided for services furnished before October 1, 1993;

2. With respect to assets disposed of on or before August 10, 1993; and

3. With respect to trusts established on or before August 10, 1993.

The section of the State Plan affected by this action is Supplement 9 to Attachment 2.6-A, Eligibility Conditions and Requirements, Transfer of Resources.

The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) amended § 1917(c) and (d) of the Social Security Act. This section describes the provisions of the law regarding how tranfers of assets and certain trusts are to be treated in determining Medicaid eligibility. OBRA 93 mandated the following changes:

• Increases the look-back period for transfers of assets from 30 to 36 months for most transfers, but to 60 months for transfers accomplished by the creation of trusts.

The previous law limited the Commonwealth from evaluating transfers that occurred more than 30 months prior to the date an individual applied for Medicaid and became institutionalized. Individuals could have transferred assets and waited for 30 months before applying for Medicaid. In these cases the transfer would not have affected Medicaid eligibility. The new law increases the look-back period to 36 months for transfers of assets except when the transfer involves a trust. In the latter case, the look-back period is increased to 60 months.

• Requires that multiple transfers be combined for determination of the length of the ineligibility period.

The previous law mandated a period of ineligibility beginning with the date of the transfer. Increasingly, applicants were manipulating this provision by transferring large amounts of assets in small installments. By creating numerous small transfers rather than one large transfer, the applicant could significantly reduce the length of ineligibility, because ineligibility periods associated with each transfer must run concurrently. This amendment requires that multiple transfers be combined so that the ineligibility period is computed from the total amount transferred resulting in consecutive ineligibility periods.

• Expands the definition of "assets" to include both income and resources.

The previous law affected only transfers of "resources." However, some individuals received large lump sum payments. According to Medicaid eligibility requirements, such payments were regarded as income in the month during which they were received and as resources if ownership was retained until the next month. Some applicants transferred substantial funds within the same month. Since this property was regarded as income there was no penalty for such transfers. The new law will treat transfers of income and resources alike and imposes an ineligibility period for transfers of either.

• Defines as a transfer any actions taken by an applicant or anyone acting on his behalf (including a court) to eliminate legal ownership in an asset.

The previous law limited transfers to actions taken by the applicant or his spouse. Actions taken by others or by court order were not regarded as transfers. There have been instances in which a third party instituted an action which changed an applicant's ownership of property. This often happened when property was jointly owned. The new law will close this loophole, to include actions taken by others which do not result in fair compensation to the applicant for his legal interest in property.

• Treats the creation of trusts as a transfer of assets and defines trusts to include other similar types of legal devices.

The previous law did not preclude the creation of trusts and disregarded assets placed in a discretionary trust if the trustee did not make the asset available except in limited instances. The new law expands the countability of income and resources placed in trust and counts as a transfer of assets the disposition of an applicant's income or corpus of a trust to any other individual.

• Removes the 30-month cap on the ineligibility period and mandates that the length of ineligibility be open-ended and based upon the uncompensated value of the assets transferred.

The previous law imposed a period of ineligibility for Medicaid payment of nursing facility or home- and community-based waiver services. The period was determined by dividing the uncompensated value of the property transferred by the average monthly cost of nursing facility services. The quotient derived was the number of months the applicant would be ineligible for Medicaid payment of nursing facility or waiver services. However, regardless of the value, the waiting period could not exceed 30 months from the date of transfer. The new law removes the 30-month maximum length of ineligibility. Now the waiting period will have no maximum length.

Citizens have been using estate and financial planning to dispose of assets which, if retained, would have caused ineligibility for Medicaid. Once they had sheltered their assets, they became eligible for

Medicaid, including long-term care (nursing home) services. In OBRA '93, Congress amended Medicaid law to prohibit such manipulation of financial assets.

VR 460-03-2.6109. Transfer of Resources

PART I.
TRANSFER OF RESOURCES.

~~§ 1.~~ *§ 1.1.* Transfer of resources.

1902(f) and 1917 of the Act.

A. The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value. See ~~pages 8 and 9~~ *§ 1.2* of this supplement for procedures applicable to all transfers of resources.

~~A.~~ *B.* Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in § 1613(c) of the Social Security Act (Act).

1. Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

a. ☒ The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds $12,000. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

(See ~~pages 8 and 9~~ *§ 1.2* of this supplement. This transfer of resources rule includes the transfer of the former residence of an inpatient in a medical institution.)

b. ☐ The period of ineligibility is less than 24 months, as specified below:

c. ☒ The agency has provisions for waiver of denial of eligibility in any instance where the state determines that a denial would work an undue hardship.

2. Transfer of the home of an individual who is an inpatient in a medical institution.

☐ A period of ineligibility applies to inpatients in an SNF, ICF or other medical institution as permitted under § 1917(c)(2)(B)(i).

a. Subject to the exceptions on page 2 of this supplement, an individual is ineligible for 24 months after the date on which he disposed of the home. However, if the uncompensated value of the home is less than the average amount payable under this plan for 24 months of care in an SNF, the period of ineligibility is a shorter time, bearing a reasonable relationship (based on the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

b. ☐ Subject to the exceptions on page 2 of this supplement, if the uncompensated value of the home is more than the average amount payable under this plan as medical assistance for 24 months of care in an SNF, the period of ineligibility is more than 24 months after the date on which he disposed of the home. The period of ineligibility bears a reasonable relationship (based upon the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

No individual is ineligible by reason of subdivision A 2 if:

(1) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and to return to that home;

(2) Title to the home was transferred to the individual's spouse or child who is under age 21, or (for states eligible to participate in the state program under title XVI of the Social Security Act) is blind or permanently and totally disabled or (for states not eligible to participate in the state program under title XVI of the Social Security Act) is blind or disabled as defined in § 1614 of the Act;

(3) A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual intended to dispose of the home either at fair market value or for other valuable consideration; or

(4) The agency determines that denial of eligibility would work an undue hardship.

3. 1902(f) States

☐ Under the provisions of § 1902(f) of the Social Security Act, the following transfer of resource criteria more restrictive than those established under § 1917(c) of the Act, apply:

~~B.~~ *C.* Other than those procedures specified elsewhere in the supplement, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:

1. If the uncompensated value of the transfer is

$12,000 or less: the individual is ineligible for two years from the date of the transfer.

2. If the uncompensated value of the transfer is more than $12,000: the individual is ineligible for two years, plus an additional 2 months for every $1,000 or part thereof of uncompensated value over $12,000, from the date of transfer.

~~2.~~ *§ 1.2.* Property transfer.

A. An applicant for or recipient of Medicaid is ineligible for Medicaid if he transferred or otherwise disposed of his legal equitable interest in real or personal property for less than fair market value. Transfer of property precludes eligibility for two years from the date of the transfer if the uncompensated value of the property was $12,000 or less. If the uncompensated value was over $12,000, an additional two months of ineligibility will be added for each $1,000 of additional uncompensated value (see following table). "Uncompensated value" means the current market value of the property, or equity in the property, at the time it was transferred, less the amount of compensation (money, goods, services, etc.) received for the property.

B. Exceptions to this provision are:

1. When the transfer was not made with the intent of establishing or retaining eligibility for Medicaid or SSI. Any transfer shall be presumed to have been for the purpose of establishing or retaining eligibility for Medicaid or SSI unless the applicant/recipient furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.

a. The applicant/recipient has the burden of establishing, by objective evidence of facts rather than statement of subjective intent, that the transfer was exclusively for another purpose.

b. Such evidence shall include evidence that adequate resources were available at the time of the transfer for the applicant/recipient's support and medical care including nursing home care, considering his age, state of health, and life expectancy.

c. The declaration of another purpose shall not be sufficient to overcome this presumption of intent.

d. The establishment of the fact that the applicant/recipient did not have specific knowledge of Medicaid or SSI eligibility policy is not sufficient to overcome the presumption of intent.

2. Retention of the property would have no effect on eligibility unless the property is a residence of an individual in a nursing home for a temporary period.

3. When transfer of the property resulted in compensation (in money, goods, or services) to the applicant/recipient which approximated the equity value of the property.

4. When the receiver of the property has made payment on the cost of the applicant/recipient's medical care which approximates the equity value of the property.

5. When the property owner has been a victim of another person's actions, except those of a legal guardian, committee, or power-of-attorney, who obtained or disposed of the property without the applicant/recipient's full understanding of the action.

6. When prior to October 1, 1982, the Medicaid applicant transferred a prepaid burial account (plan) which was valued at less than $1,500 for the purpose of retaining eligibility for SSI, and was found ineligible for Medicaid solely for that reason. The applicant, after reapplying, may be eligible regardless of the earlier transfer of a prepaid burial account if the applicant currently meets all other eligibility criteria.

7. When the property is transferred into an irrevocable trust designated solely for the burial of the transferor or his spouse. The amount transferred into the irrevocable burial trust, together with the face value of life insurance and any other irrevocable funeral arrangements, shall not exceed $2,000 prior to July 1, 1988, and shall not exceed $2,500 after July 1, 1988.

PERIOD OF INELIGIBILITY DUE TO TRANSFER OF PROPERTY TABLE

Uncompensated Value of Property			Period of Ineligibility
$ 0	-	$12,000	24 months
12,000.01	-	13,000	26 months
13,000.01	-	14,000	28 months
14,000.01	-	15,000	30 months
15,000.01	-	16,000	32 months

For each additional $1,000 add two months of ineligibility.

C. The preceding policy applies to eligibility determinations on and before June 30, 1988. The following policy applies to eligibility determinations on and after July 1, 1988.

1. The state plan provides for a period of ineligibility for nursing facility services, equivalent services in a medical institution, and home and community-based services in the case of an institutionalized individual (as defined in paragraph (3) of § 1917 (c) who, disposed of resources for less than fair market value, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the state plan on

that date) or, if the individual is not entitled on the date of institutionalization, the date the individual applies for assistance while an institutionalized individual.

a. 30 months, or

b. The total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the state.

2. An individual shall not be ineligible for medical assistance by reason of subdivision 1 to the extent that:

a. The resources transferred were a home and title to the home was transferred to:

(1) The spouse of such individual;

(2) A child of such individual who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act;

(3) A sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(4) A son or daughter of such individual (other than a child described in subdivision 2) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual; and who (as determined by the state) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

b. The resources were transferred to (or to another for the sole benefit of) the community spouse as defined in § 1924(h)(2) of the Social Security Act, or to the individual's child who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act.

c. A satisfactory showing is made to the state (in accordance with any regulations promulgated by the Secretary of the United States Department of Health and Human Services) that:

(1) The individual intended to dispose of the resources either at fair market value, or for other valuable consideration. To show intent to receive adequate compensation, the individual must provide objective evidence that:

(a) For real property, the individual made an initial and continuing effort to sell the property according to the "reasonable effort to sell" provisions of the Virginia Medicaid State Plan;

(b) For real or personal property, the individual made a legally binding contract that provided for receipt of adequate compensation in a specified form (goods, services, money, etc.) in exchange for the transferred property;

(c) An irrevocable burial trust of $2,500 or less was established on or after July 1, 1988, as compensation for the transferred money;

(d) An irrevocable burial trust over $2,500 was established on or after July 1, 1988, and the individual provides objective evidence to show that all funds in the trust are for identifiable funeral services; or

(2) The resources were transferred exclusively for a purpose other than to qualify for medical assistance; the individual must provide objective evidence that the transfer was exclusively for another purpose and the reason for the transfer did not include possible or future Medicaid eligibility; or

(3) Consistent with § 1917(c)(2)(D), an institutionalized spouse who (or whose spouse) transferred resources for less than fair market value shall not be found ineligible for nursing facility service, for a level of care in a medical institution equivalent to that of nursing facility services, or for home and community-based services where the state determines that denial of eligibility would work an undue hardship under the provision of § 1917(c)(2)(D) of the Social Security Act.

3. In this section, the term "institutionalized individual" means an individual who is an inpatient in a nursing facility, or who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in § 1902 (a)(10)(A)(ii)(VI).

4. In this section, the individual's home is defined as the house and lot used as the principal residence and all contiguous property up to $5,000.

PART II.
TRANSFERS AND TRUSTS AFTER AUGUST 10, 1993.

§ 2.1. Applicability.

The following policy applies to medical assistance provided for services furnished on or after October 1, 1993, with respect to assets disposed of after August 10, 1993, and with respect to trusts established after August 10, 1993.

§ 2.2. Definitions.

"Assets" means, with respect to an individual, all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action:

1. By the individual or the individual's spouse;

2. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

3. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" has the meaning given such term in § 1612 of the Social Security Act.

"Institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is described in § 1902(a)(10)(A)(ii)(VI) of the Social Security Act.

"Resources" has the meaning given such term in § 1613 of the Social Security Act, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

§ 2.3. Transfer of assets rule.

An institutionalized individual who disposes of, or whose spouse disposes of, assets for less than fair market value on or after the look-back date specified in § 2.5 shall be ineligible for nursing facility services, a level of care in any institution equivalent to that of nursing facility services and for home- or community-based services furnished under a waiver granted under subsection (c) of § 1915 of the Social Security Act.

§ 2.4. Period of ineligibility.

The ineligibility period shall begin on the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other period of ineligibility under this section. The ineligibility period shall be equal to but shall not exceed the number of months derived by dividing:

1. The total, cumulative uncompensated value of all assets transferred as defined in § 2.2 on or after the look-back date specified in § 2.5, by

2. The average monthly cost to a private patient of nursing facility services in the Commonwealth at the time of application for medical assistance.

§ 2.5. Look-back date.

The look-back date is a date that is 36 months (or 60 months in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to this section or § 2.9) before the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State Plan for Medical Assistance.

§ 2.6. Exceptions.

An individual shall not be ineligible for medical assistance by reason of this section to the extent that:

1. The assets transferred were a home and title to the home was transferred to:

a. The spouse of the individual;

b. A child of the individual who is under age 21, or is blind or disabled as defined in § 1614 of the Social Security Act;

c. A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of a least one year immediately before the date the individual becomes an institutionalized individual; or

d. A son or daughter of the individual (other than a child described in subdivision 1 b) who was residing in the individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

2. The assets:

a. Were transferred to the individual's spouse or to another person for the sole benefit of the individual's spouse;

b. Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;

c. Were transferred to the individual's child who is under age 21 or who is disabled as defined in § 1614 of the Social Security Act, or to a trust (including a trust described in § 2.16) established solely for the benefit of such child; or

d. Were transferred to a trust (including a trust described in § 2.16) established solely for the benefit of an individual under age 65 years of age who is disabled as defined in § 1614(a)(3) of the Social Security Act.

3. A satisfactory showing is made that:

a. The individual intended to dispose of the assets either at fair market value, or for other valuable consideration;

b. The assets were transferred exclusively for a purpose other than to qualify for medical assistance;

c. All assets transferred for less than fair market value have been returned to the individual; or

d. The Commonwealth determines that the denial of eligibility would work an undue hardship.

§ 2.7. Assets held in common with another person.

In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or other arrangement recognized under state law, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

§ 2.8. Transfers by both spouses.

In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance, the Commonwealth shall apportion the period of ineligibility (or any portion of the period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State Plan.

§ 2.9. For trust(s) created after August 10, 1993.

For purposes of determining an individual's eligibility for or amount of medical assistance benefits subject to § 2.16, §§ 2.10 through 2.16 shall apply.

§ 2.10. Trust(s) defined.

The term "trust" includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the United States Secretary of Health and Human Services specifies for purposes of administration of § 1917(c) or (d) of the Social Security Act.

§ 2.11. Creation of trust(s) defined.

For purposes of this subsection, an individual shall be considered to have established a trust(s) if assets of the individual were used to form all or part of the corpus of the trust(s) and if any of the following individuals established the trust(s) other than by will:

1. The individual;

2. The individual's spouse;

3. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

4. A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

§ 2.12. Proportional interest in trust(s).

In the case of a trust(s) the corpus of which includes assets of an individual (as determined under § 2.11) and assets of any other person or persons, the provision of this section shall apply to the portion of the trust(s) attributable to the assets of the individual.

§ 2.13. Trust(s) affected.

Subject to § 2.16, this section shall apply without regard to:

1. The purposes for which a trust(s) is established;

2. Whether the trustee(s) has or exercises any discretion under the trust(s);

3. Any restrictions on when or whether distributions may be made from the trust(s); or

4. Any restrictions on the use of distributions from the trust(s).

§ 2.14. Revocable trust(s).

In the case of a revocable trust(s):

1. The corpus of the trust(s) shall be considered resources available to the individual;

2. Payments from the trust(s) to or for the benefit of the individual shall be considered income of the individual; and

3. Any other payments from the trust(s) shall be considered assets disposed of by the individual for the purposes of § 2.3.

§ 2.15. Irrevocable trust(s).

In the case of irrevocable trust(s):

1. If there are any circumstances under which payment from the trust(s) could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income:

a. To or for the benefit of the individual, shall be considered income of the individual; and

b. For any other purpose, shall be considered a transfer of assets by the individual subject to § 2.3.

2. Any portion of the trust(s) from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust(s) (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of § 2.3, and the value of the trust(s) shall be determined for purposes of such section by including the amount of any payments made from such portion of the trust(s) after such date.

§ 2.16. Exceptions.

This section shall not apply to any of the following trust(s):

1. A trust(s) containing the assets of an individual under age 65 who is disabled (as defined in § 1614(a)(3) of the Social Security Act) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual or a court if the Commonwealth will receive all amounts remaining in the trust(s) upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under this State Plan.

2. A trust containing the assets of an individual who is disabled (as defined in § 1614(a)(3) of the Social Security Act) that meets all of the following conditions:

a. The trust(s) is established and managed by a nonprofit association;

b. A separate account is maintained for each beneficiary of the trust(s), but, for purposes of investment and management of funds, the trust(s) pools these accounts;

c. Accounts in the trust(s) are established solely for the benefit of individuals who are disabled (as defined in § 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court; and

d. To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust(s), the trust(s) pays to the Commonwealth from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under this State Plan.

VA.R. Doc. No. R94-308; Filed November 9, 1993, 3:29 p.m.

COMMONWEALTH of VIRGINIA

JOAN W. SMITH
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION
General Assembly Building

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

December 16, 1993

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

RE: VR 460-03-2.6109 - Transfer of Resources: Transfer of Assets and Treatment of Certain Assets.

Dear Mr. Kozlowski:

This will acknowledge receipt of the above-referenced regulations from the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law. However, this determination is premised on the assumption that both the Attorney General's Office and HCFA approve the content as complying with the relevant law.

Sincerely,

Joan W. Smith
Registrar of Regulations

JWS:jbc

BOARD OF NURSING

Title of Regulations: **VR 495-01-1. Board of Nursing Regulations.**

Statutory Authority: § 54.1-2400 and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: January 27, 1994.

Preamble:

These regulations state the requirements for approval of nursing and nurse aide education programs, the licensing of registered nurses and practical nurses, the registration of clinical nurse specialists and the certification of nurse aides in the Commonwealth of Virginia. The regulations have been adopted by the Virginia State Board of Nursing under the authority of Chapter 24 (§ 54.1-2400) and Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

The board believes that each practitioner of nursing is accountable to the Commonwealth and to the public to maintain high professional standards of practice in keeping with the ethics of the profession of nursing.

The registered nurse shall be responsible and accountable for making decisions that are based upon educational preparation and experience in nursing. The registered nurse shall be held accountable for the quality and quantity of nursing care given to patients by himself or others who are under his supervision. The registered nurse who is a clinical nurse specialist is authorized to provide advanced nursing services consistent with the requirements of law and regulations.

The licensed practical nurse shall be held accountable for the quality and quantity of nursing care given to patients by himself based upon educational preparation and experience.

The certified nurse aide is required to meet standards consistent with federal and state law and regulations in employment settings receiving Medicare and Medicaid reimbursement for care rendered.

Summary:

The Board of Nursing adopted amendments to its regulations as a result of the biennial regulatory review during which all regulations were examined for their continued effectiveness, necessity, clarity, and cost of compliance. The amendments were made in response to public comments received, to changes in nursing education, to new federal rules for nurse aides, or in an effort to clarify and simplify the regulations.

The amendments make adjustments in fees based on a change in the method of administering the licensure examination and on the requirement that revenues of the board cover its expenditures. Amendments also clarify requirements for the approval of nursing and nurse aide education programs and new rules add requirements for the approval of medication administration training programs.

The only change from the proposal is the deletion of a sentence in § 5.3 D 1. Inadvertently, the sentence was not stricken in the proposed regulations as submitted to and published in The Virginia Register of Regulations. However, it was stricken in the proposal sent to those on the public participation guidelines mailing list and no comments were received about the change.

Summary of Public Comment and Agency Response: A summary of comments made by the public and agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9909. There may be a charge for copies.

VR 495-01-1. Board of Nursing Regulations.

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:

"Approval" means the process by which the board or a governmental agency in another state or foreign country evaluates and grants official recognition to nursing education programs that meet established standards not inconsistent with Virginia law.

"Associate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or other institution and designed to lead to an associate degree in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, State Council of Higher Education or an Act of the General Assembly.

"Baccalaureate degree nursing program" means a nursing education program preparing for registered nurse licensure, offered by a Virginia college or university and designed to lead to a baccalaureate degree with a major in nursing, provided that the institution is authorized to confer such degree by the State Board of Education, the State Council of Higher Education or an Act of the General Assembly.

"Board" means the State Board of Nursing.

"Clinical nurse specialist" means a licensed registered nurse who holds:

1. A master's degree from a board approved program which prepares the nurse to provide advanced clinical nursing services; and

2. Specialty certification from a national certifying organization acceptable to the board or an exception available from March 1, 1990, to July 1, 1990.

"Conditional approval" means a time-limited status which results when an approved nursing education program has failed to maintain requirements as set forth in § 2.2 of these regulations.

"Cooperating agency" means an agency or institution that enters into a written agreement to provide learning experiences for a nursing education program.

"Diploma nursing program" means a nursing education program preparing for registered nurse licensure, offered by a hospital and designed to lead to a diploma in nursing, provided the hospital is licensed in this state.

"National certifying organization" means an organization that has as one of its purposes the certification of a specialty in nursing based on an examination attesting to the knowledge of the nurse for practice in the specialty area.

"Nursing education program" means an entity offering a basic course of study preparing persons for licensure as registered nurses or as licensed practical nurses. A basic course of study shall include all courses required for the degree, diploma or certificate.

"Practical nursing program" means a nursing education program preparing for practical nurse licensure, offered by a Virginia school, that leads to a diploma or certificate in practical nursing, provided the school is authorized by the appropriate governmental agency.

"Program director" means a registered nurse who has been designated by the controlling authority to administer the nursing education program.

"Provisional approval" means the initial status granted to a nursing education program which shall continue until the first class has graduated and the board has taken final action on the application for approval.

"Recommendation" means a guide to actions that will assist an institution to improve and develop its nursing education program.

"Requirement" means a mandatory condition that a nursing education program must meet to be approved.

§ 1.2. Delegation of authority.

A. The executive director of the board shall issue a certificate of registration to each person who meets the requirements for initial licensure under §§ 54.1-3017, 54.1-3018, 54.1-3020 and 54.1-3021 of the Code of Virginia. Such certificates of registration shall bear the signature of the president of the board, the executive director and the director of the Department of Health Regulatory Boards.

B. The executive director shall issue license to each applicant who qualifies for such license under § 54.1-3011 of the Code of Virginia. Such licenses shall bear the name of the executive director.

C. The executive director shall be delegated the authority to execute all notices, orders and official documents of the board unless the board directs otherwise.

§ 1.3. Fees.

Fees required in connection with the licensing of applicants by the board are:

1. Application for ~~R.N.~~ Licensure *by Examination* ..... ~~$46~~ *$25*

2. Application for ~~L.P.N.~~ Licensure *by Endorsement* ..... ~~$36~~ *$50*

3. Biennial Licensure Renewal ..... ~~$20~~ *$40*

4. Reinstatement ~~Lapsed~~ *of* License $50

5. Duplicate License ..... ~~$10~~ *$15*

6. Verification of License ..... ~~$10~~ *$25*

~~7. Transcript of Examination Scores .....$5~~

~~8.~~ *7.* Transcript of *All or Part of* Applicant/Licensee Records ..... ~~$10~~ *$20*

~~9.~~ *8.* Returned Check Charge $15

~~10.~~ *9.* Application for C.N.S. registration $50

~~11.~~ *10.* Biennial renewal of C.N.S. registration $30

~~12.~~ *11.* Reinstatement of lapsed C.N.S. registration $25

~~13.~~ *12.* Verification of C.N.S. registration *to another jurisdiction* $25

~~§ 1.4. Public participation guidelines.~~

~~A. Mailing list.~~

~~The Virginia State Board of Nursing (board) will maintain a list of persons and organizations who will be mailed the following documents as they become available:~~

1. "Notice of intent" to promulgate regulations.

2. "Notice of public hearing" or "informational proceeding," the subject of which is proposed or existing regulation.

3. Final regulation adopted.

Any person wishing to be placed on the mailing list may do so by writing the board. In addition, the board, at its discretion, may 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. Persons on the list will be provided all above-listed information. Individuals and organizations will be periodically requested to indicate their desire to continue to receive documents or be deleted from the list. Where mail is returned as undeliverable, individuals and organizations will be deleted from the list.

B. Notice of intent.

At least 30 days prior to publication of the notice to conduct an informational proceeding as required by § 9-6.14:1 of the Code of Virginia, the board will publish a "notice of intent." This notice will contain a brief and concise statement of the possible regulation or the problem the regulation would address and invite any person to provide written comment on the subject matter. Such notice shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

C. Public comment period.

At least once each biennium, the board will conduct an informational proceeding, which may take the form of a public hearing, to receive public comment on existing regulations. The purpose of the proceeding will be to solicit public comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance. Notice of such proceeding will be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations. Such proceedings may be held separately or in conjunction with other informational proceedings.

D. Petitions to the board.

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

E. Publication in the Virginia Register of Regulations.

At any meeting of the board or any subcommittee or advisory committee, where the formulation or adoption of regulation occurs, the subject matter shall be transmitted to the Registrar of Regulations for inclusion in the Virginia Register of Regulations.

F. Advisory committee.

The board, in cooperation with the Council on Health Regulatory Boards, may appoint advisory committees as they deem necessary to provide for adequate citizen participation in the formation, promulgation, adoption, and review of regulations.

PART II.
NURSING EDUCATION PROGRAMS.

§ 2.1. Establishing a nursing education program.

Phase I.

A. An institution wishing to establish a nursing education program shall:

1. Submit to the board, at least 15 months in advance of expected opening date, a statement of intent to establish a nursing education program;

2. Submit to the board, along with the statement of intent, a feasibility study to include the following information:

a. Studies documenting the need for the program;

b. Purpose and type of program;

c. Availability of qualified faculty;

d. Budgeted faculty positions;

e. Availability of clinical facilities for the program;

f. Availability of academic facilities for the program;

g. Evidence of financial resources for the planning, implementation and continuation of the program;

h. Anticipated student population;

i. Tentative time schedule for planning and initiating the program; and

j. Current catalog, if applicable.

3. Respond to the board's request for additional information.

B. A site visit shall be conducted by a representative of the board.

C. The board, after review and consideration, shall either approve or disapprove Phase I.

1. If Phase I is approved, the institution may apply for provisional approval of the nursing education program as set forth in these regulations.

2. If Phase I is disapproved, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

Phase II.

D. The application for provisional approval shall be complete when the following conditions are met:

1. A program director has been appointed and there are sufficient faculty to initiate the program (§ 2.2 C of these regulations);

2. A tentative written curriculum plan developed in accordance with § 2.2 F of these regulations has been submitted; and

E. The board, after review and consideration, shall either grant or deny provisional approval.

1. If provisional approval is granted:

a. The admission of students is authorized; and

b. The program director shall submit quarterly progress reports to the board which shall include evidence of progress toward application for approval and other information as required by the board.

2. If provisional approval is denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

F. Following graduation of the first class, the institution shall apply for approval of the nursing education program.

Phase III.

G. The application for approval shall be complete when a self-evaluation report of compliance with § 2.2 of these regulations has been submitted and a survey visit has been made by a representative of the board.

H. The board will review and consider the self-evaluation and the survey reports at the next regularly scheduled meeting.

I. The board shall either grant or deny approval. If denied, the institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

§ 2.2. Requirements for approval.

A. Organization and administration.

1. The institution shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution; by resolution of its board of control; or by the institution's own charter or articles of incorporation.

2. Universities, colleges, community or junior colleges, proprietary schools and public schools offering nursing education programs shall be accredited by the appropriate state agencies and the Southern Association of Colleges and Schools.

3. Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Healthcare Organizations.

4. Any agency or institution that is utilized by a nursing education program shall be one that is authorized to conduct business in the Commonwealth of Virginia, or in the state in which the agency or institution is located.

5. The authority and responsibility for the operation of the nursing education program shall be vested in a program director who is duly licensed to practice professional nursing in Virginia and who is responsible to the controlling board, either directly or through appropriate administrative channels.

6. A written organizational plan shall indicate the lines of authority and communication of the nursing education program to the controlling body; to other departments within the controlling institution; to the cooperating agencies; and to the advisory committee, if one exists.

7. Funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The program director of the nursing education program shall be responsible for the budget recommendations and administration, consistent with the established policies of the controlling agency.

B. Philosophy and objectives.

Written statements of philosophy and objectives shall be:

1. Formulated and accepted by the faculty;

2. Directed toward achieving realistic goals;

3. Directed toward the meaning of education, nursing and the learning process;

4. Descriptive of the practitioner to be prepared; and

5. The basis for planning, implementing and evaluating the total program.

C. Faculty.

1. Qualifications.

a. Every member of a nursing faculty, including the

program director, shall hold a current license to practice as a registered nurse in Virginia.

b. Every member of a nursing faculty responsible for teaching students in a cooperating agency located outside the jurisdictional limits of Virginia shall meet the licensure requirements of that jurisdiction.

c. The program director and each member of the nursing faculty shall maintain professional competence through such activities as nursing practice, continuing education programs, conferences, workshops, seminars, academic courses, research projects and professional writing.

d. For baccalaureate degree programs:

(1) The program director shall hold a doctoral degree.

(2) Every member of the nursing faculty shall hold a graduate degree. Faculty members without a graduate degree with a major in nursing shall have a baccalaureate degree with a major in nursing.

~~(3) At least one faculty member in each clinical area shall have master's preparation in that clinical specialty.~~

e. For associate degree and diploma programs:

(1) The program director shall hold a graduate degree, preferably with a major in nursing.

(2) The majority of the members of the nursing faculty shall hold a graduate degree, preferably with a major in nursing.

(3) Other members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

f. For practical nursing programs.

(1) The program director shall hold a baccalaureate degree, preferably with a major in nursing.

(2) The majority of the members of the nursing faculty shall hold a baccalaureate degree, preferably with a major in nursing.

g. Exceptions to provisions of subparagraphs d, e, and f of this subsection shall be by board approval.

(1) Initial request for exception.

(a) The program director shall submit a request for initial exception in writing for considerations at a regular board meeting prior to the term during which the nursing faculty member is scheduled to teach. and a statement of intent, from the prospective faculty member, to pursue the required degree shall accompany each request.

(2) Request for continuing exception.

(a) Continuing exception will be based on the progress of the nursing faculty member toward meeting the degree required by these regulations during each year for which the exception is requested.

(b) The program director shall submit the request for continuing exception in writing for consideration at a regular board meeting prior to the next term during which the nursing faculty member is scheduled to teach.

(c) A list of courses required for the degree being pursued and college transcripts showing successful completion of a minimum of two of the courses during the past academic year shall accompany each request.

(3) The executive director of the board shall be authorized to make the initial decision on requests for exceptions. Any appeal of that decision shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

2. Number.

a. The number of faculty shall be sufficient to prepare the students to achieve the objectives of the educational program and such number shall be reasonably proportionate to:

(1) Number of students enrolled;

(2) Frequency of admissions;

(3) Education and experience of faculty members;

(4) Number and location of clinical facilities; and

(5) Total responsibilities of the faculty.

b. When students are giving direct care to patients, the ratio of students to faculty in clinical areas shall not exceed 10 students to one faculty member.

3. Conditions of employment.

a. Qualifications and responsibilities for faculty positions shall be defined in writing.

b. Faculty assignments shall allow time for class and laboratory preparation; teaching; program revision; improvement of teaching methods; academic advisement and counseling of students; participation in faculty organizations and committees; attendance

at professional meetings; and participation in continuing education activities.

4. Functions.

The principal functions of the faculty shall be to:

a. Develop, implement and evaluate the philosophy and objectives of the nursing education program;

b. Participate in designing, implementing, teaching, and evaluating and revising the curriculum;

c. Develop and evaluate student admission, progression, retention and graduation policies within the framework of the controlling institution;

d. Participate in academic advisement and counseling of students; and

e. Provide opportunities for student and graduate evaluation of curriculum and teaching and program effectiveness.

5. Organization.

a. The nursing faculty shall hold regular meetings for the purpose of developing, implementing and evaluating the nursing education program. ~~Written rules shall govern the conduct of meetings.~~

~~b. All members of the faculty shall participate in the regular faculty meetings.~~

~~c. Committees shall be established to implement the functions of the faculty.~~

~~d.~~ *b.* Minutes of faculty and committee meetings, including actions taken, shall be recorded and available for reference.

~~e.~~ *c.* There shall be provision for student participation.

D. Students.

1. Admission, promotion and graduation.

a. Requirements for admission to the nursing education program shall not be less than the statutory requirements that will permit the graduate to be admitted to the appropriate licensing examination.

(EXPLANATORY NOTE: Reference subdivision 1 of subsection A of § 54.1-3017 of the Code of Virginia: The equivalent of a four-year high school course of study is considered to be: high school equivalence; or

(2) Satisfactory completion of the college courses required by the nursing education program.)

b. Students shall be selected on the basis of established criteria and without regard to age, race, creed, sex or national origin.

c. Requirements for admission, readmission, advanced standing, progression, retention, dismissal and graduation shall be available to the students in written form.

E. Records.

1. School records.

A system of records shall be maintained and be made available to the board representative and shall include:

a. Data relating to accreditation by any agency or body,

b. Course outlines,

c. Minutes of faculty and committee meetings,

d. ~~Reports of standardized tests~~ *A record of the performance of graduates on the licensing examination* ,

e. Survey reports.

2. Student records.

a. A file shall be maintained for each student. Each file shall be available to the board representative and shall include:

(1) The student's application,

(2) High school transcript or copy of high school equivalence certificate,

(3) Current record of achievement.

b. A final transcript shall be retained in the permanent file of the institution.

c. Provision shall be made for the protection of student and graduate records against loss, destruction and unauthorized use.

3. School bulletin or catalogue.

Current information about the nursing education program shall be published periodically and distributed to students, applicants for admission and the board. Such information shall include:

a. Description of the program.

b. Philosophy and objectives of the controlling

institution and of the nursing program.

c. Admission and graduation requirements.

d. Fees.

e. Expenses.

f. Financial aid.

g. Tuition refund policy.

h. Education facilities.

i. Living accommodations.

j. Student activities and services.

k. Curriculum plan.

l. Course descriptions.

m. Faculty-staff roster.

n. School calendar.

F. Curriculum.

1. Curriculum shall reflect the philosophy and objectives of the nursing education program, and shall be consistent with the law governing the practice of nursing.

2. The ratio between nursing and nonnursing credit shall be based on a rationale to ensure sufficient preparation for the safe and effective practice of nursing.

3. Learning experiences shall be selected to fulfill curriculum objectives.

4. Nursing education programs preparing for practical nursing licensure shall include:

a. Principles and practice in nursing encompassing the attainment and maintenance of physical and mental health and the prevention of illness for individuals and groups throughout the life cycle;

b. Basic concepts of the nursing process;

c. Basic concepts of anatomy, physiology, chemistry, physics and microbiology;

d. Basic concepts of communication, growth and development, interpersonal relations, patient education and cultural diversity;

e. Ethics, nursing history and trends, vocational and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and

f. Basic concepts of pharmacology, nutrition and diet therapy.

5. Nursing education programs preparing for registered nurse licensure shall include:

a. Theory and practice in nursing, encompassing the attainment and maintenance of physical and mental health and the prevention of illness throughout the life cycle for individuals, groups and communities;

b. Concepts of the nursing process;

c. Concepts of anatomy, physiology, chemistry, microbiology and physics;

d. Sociology, psychology, communications, growth and development, interpersonal relations, group dynamics, cultural diversity and humanities;

e. Concepts of pharmacology, nutrition and diet therapy, and pathophysiology;

f. Concepts of ethics, nursing history and trends, and the professional and legal aspects of nursing, including regulations and sections of the Code of Virginia related to nursing; and

g. Concepts of leadership, management and patient education.

G. Resources, facilities and services.

1. Periodic evaluations of resources, facilities and services shall be conducted by the administration, faculty, students and graduates of the nursing education program.

2. Secretarial and other support services shall be provided.

3. Classrooms, conference rooms, laboratories, clinical facilities and offices shall be available to meet the objectives of the nursing education program and the needs of the students, faculty, administration and staff.

4. The library shall have holdings that are current, pertinent and accessible to students and faculty, and sufficient in number to meet the needs of the students and faculty.

5. Written agreements with cooperating agencies shall be developed, maintained and periodically reviewed. The agreement shall:

a. Ensure full control of student education by the faculty of the nursing education program, including the selection and supervision of learning experiences.

b. Provide that an instructor shall be present on the clinical unit(s) to which students are assigned for direct patient care.

c. Provide for cooperative planning with designated agency personnel.

6. Any observational experiences shall be planned in cooperation with the agency involved to meet stated course objectives.

7. Cooperating agencies shall be approved by the appropriate accreditation, evaluation or licensing bodies, if such exist.

H. Program changes ~~requiring board of nursing approval~~

1. The following proposed changes require board approval prior to their implementation:

~~1.~~ *a.* Proposed changes in the nursing education program's philosophy and objectives that result in program revision.

~~2.~~ *b.* Proposed changes in the curriculum that result in alteration of the length of the nursing education program.

~~3.~~ *2.* ~~Proposed~~ *Other* additions, deletions or ~~major~~ revisions of courses *shall be reported to the board with the annual report required in § 2.3 A of these regulations .*

I. Procedure for approval of program change.

1. When a program change is contemplated, the program director shall inform the board or board representative.

2. When a program change is requested, a plan shall be submitted to the board including:

a. Proposed change,

b. Rationale for the change,

c. Relationship of the proposed change to the present program.

3. ~~Twelve~~ *Fifteen* copies of these materials shall be submitted to the board at least three weeks prior to the board meeting at which the request will be considered.

§ 2.3. ~~Procedure for maintaining approval~~ *Maintaining an approved nursing education program .*

A. The program director of each nursing education program shall submit an annual report to the board.

B. Each nursing education program shall be reevaluated at least every eight years and shall require:

1. A comprehensive self-evaluation report based on § 2.2 of these regulations, and

2. A survey visit by a representative(s) of the board on dates mutually acceptable to the institution and the board.

C. The self-evaluation and survey visit reports shall be presented to the board for consideration and action at a regularly scheduled board meeting. The reports and the action taken by the board shall be sent to the appropriate administrative officers of the institution. In addition, a copy shall be forwarded to the executive officer of the state agency or agencies having program approval authority or coordinating responsibilities for the governing institutions.

D. Interim visits shall be made to the institution by board representatives at any time within the eight-year period either by request or as deemed necessary by the board.

E. A nursing education program shall continue to be approved provided the requirements set forth in § 2.2 of these regulations are attained and maintained.

F. If the board determines that a nursing education program is not maintaining the requirements of § 2.2 of these regulations, the program shall be placed on conditional approval and the governing institution shall be given a reasonable period of time to correct the identified deficiencies. The institution may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

G. If the governing institution fails to correct the identified deficiencies within the time specified by the board, the board shall withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.) Sections 2.4 B and C of these regulations shall apply to any nursing education program whose approval has been withdrawn.

§ 2.4. Closing of an approved nursing education program.

A. Voluntary closing.

When the governing institution anticipates the closing of a nursing education program, it shall notify the board in writing, stating the reason, plan and date of intended closing. The governing institution shall choose one of the following closing procedures:

1. The program shall continue until the last class enrolled is graduated.

a. The program shall continue to meet the standards for approval until all of the enrolled students have

graduated.

b. The date of closure is the date on the degree, diploma or certificate of the last graduate.

c. The governing institution shall notify the board of the closing date.

2. The program shall close after the governing institution has assisted in the transfer of students to other approved programs.

a. The program shall continue to meet the standards required for approval until all students are transferred.

b. A list of the names of students who have been transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

c. The date on which the last student was transferred shall be the closing date of the program.

B. Closing as a result of denial or withdrawal or approval.

When the board denies or withdraws approval of a program, the governing institution shall comply with the following procedures:

1. The program shall close after the institution has made a reasonable effort to assist in the transfer of students to other approved programs. A time frame for the transfer process shall be established by the board.

2. A list of the names of students who have transferred to approved programs and the date on which the last student was transferred shall be submitted to the board by the governing institution.

3. The date on which the last student was transferred shall be the closing date of the program.

C. Custody of records.

Provision shall be made for custody of records as follows:

1. If the governing institution continues to function, it shall assume responsibility for the records of the students and the graduates. The institution shall inform the board of the arrangements made to safeguard the records.

2. If the governing institution ceases to exist, the academic transcript of each student and graduate shall be transferred by the institution to the board for safekeeping.

§ 2.5. Clinical nurse specialist education program.

An approved program shall be offered by:

1. A nationally accredited school of nursing within a college or university that offers a master's degree in nursing designed to prepare a registered nurse for advanced practice in a clinical specialty in nursing; or

2. A college or university that offers a master's degree consistent with the requirements of a national certifying organization as defined in § 1.1 of these regulations.

PART III.
LICENSURE AND PRACTICE.

§ 3.1. Licensure by examination.

A. The board shall administer examinations for registered nurse licensure and examinations for practical nurse licensure no less than twice a year.

B. The minimum passing score on the examination for registered nurse licensure shall be determined by the board.

C. If a candidate does not take the examination when scheduled, the application shall be retained on file as required for audit and the candidate must file a new application and fee to be rescheduled.

D. Any applicant suspected of giving or receiving unauthorized assistance during the writing of the examination shall be noticed for a hearing before the board to determine whether the license shall be issued.

E. The board shall not release examination results of a candidate to any individual or agency without written authorization from the applicant or licensee.

F. An applicant for the licensing examination shall:

1. File the required application and fee no less than 60 days prior to the scheduled date of the examination.

2. Arrange for the board to receive the final certified transcript from the nursing education program at least 15 days prior to the examination date or as soon thereafter as possible. The transcript must be received prior to the reporting of the examination results to candidates.

G. Fifteen days prior to an examination date, all program directors shall submit a list of the names of those students who have completed or are expected to complete the requirements for graduation since the last examination. Any change in the status of a candidate within the above specified 15-day period shall be reported to the board immediately.

H. Practice of nursing pending receipt of examination results.

1. Graduates of approved nursing education programs may practice nursing in Virginia pending the results of the first licensing examination given by a board of nursing following their graduation, provided they have filed an application for licensure in Virginia. Candidates taking the examination in Virginia shall file the application for licensure by examination. Candidates taking the examination in other jurisdictions shall file the application for licensure by endorsement.

2. Candidates who practice nursing as provided in § 3.1 I 1 of these regulations shall use the designation "R.N. Applicant" or "L.P.N. Applicant" when signing official records.

3. The designations "R.N. Applicant" and "L.P.N. Applicant" shall not be used by applicants who do not take or who have failed the first examination for which they are eligible.

I. Applicants who fail the examination.

1. An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Virginia.

2. An applicant for reexamination shall file the required application and fee no less than 60 days prior to the scheduled date of the examination.

3. Applicants who have failed the licensing examination in another U.S. jurisdiction and who meet the qualifications for licensure in this jurisdiction may apply for licensure by examination in Virginia. Such applicants shall submit the required application and fee. Such applicants shall not, however, be permitted to practice nursing in Virginia until the requisite license has been issued.

§ 3.2. Licensure by endorsement.

A. A graduate of an approved nursing education program who has been licensed by examination in another U.S. jurisdiction and whose license is in good standing, or is eligible for reinstatement, if lapsed, shall be eligible for licensure by endorsement in Virginia, provided the applicant satisfies the requirements for registered nurse or practical nurse licensure.

B. An applicant for licensure by endorsement shall submit the required application and fee and submit the required form to the appropriate credentialing agency in the state of original licensure for verification of licensure. Applicants will be notified by the board after 30 days, if the completed verification form has not been received.

C. If the application is not completed within one year of the initial filing date, the application shall be retained on file by the board as required for audit.

§ 3.3. Licensure of applicants from other countries.

A. Applicants whose basic nursing education was received in, and who are duly licensed under the laws of another country, shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in § 3.3 B and C of these regulations.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence of a passing score on the Commission on Graduates of Foreign Nursing Schools Qualifying Examination; and

2. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Request a transcript from the nursing education program to be submitted directly to the board office;

2. Provide evidence of secondary education to meet the statutory requirements;

3. Request that the credentialing agency, in the country where licensed, submit the verification of licensure; and

4. Submit the required application and fee for licensure by examination.

§ 3.4. Renewal of licenses.

A. Licensees born in even-numbered years shall renew their licenses by the last day of the birth month in even-numbered years. Licensees born in odd-numbered years shall renew their licenses by the last day of the birth month in odd-numbered years.

B. No less than 30 days prior to the last day of the licensee's birth month, an application for renewal of license shall be mailed by the board to the last known address of each licensee, who is currently licensed.

C. The licensee shall complete the application and return it with the required fee.

D. Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing the license by the expiration date.

E. The license shall automatically lapse if the licensee fails to renew by the last day of the birth month.

F. Any person practicing nursing during the time a

license has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

§ 3.5. Reinstatement of lapsed licenses.

A. A nurse whose license has lapsed shall file a reinstatement application and pay the current renewal fee and the reinstatement fee.

B. The board may request evidence that the nurse is prepared to resume practice in a competent manner.

§ 3.6. ~~Replacement of lost~~ *Duplicate* license.

~~A. The licensee shall report in writing the loss of the original certificate of registration or the current license.~~

~~B.~~ A duplicate license for the current renewal period shall be issued by the board upon receipt of the required ~~form~~ *information* and fee.

§ 3.7. Evidence of change of name.

A licensee who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order evidencing the change. A duplicate license shall be issued by the board upon receipt of such evidence and the required fee.

§ 3.8. Requirements for current mailing address.

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

B. Each licensee shall maintain a record of his current mailing address with the board.

C. Any change of address by a licensee shall be submitted in writing to the board within 30 days of such change.

§ 3.9. Licensed practical nursing is performed under the direction or supervision of a licensed medical practitioner, a registered nurse or a licensed dentist within the context of § 54.1-3408 of the Code of Virginia.

§ 3.10. Clinical nurse specialist registration.

A. Initial registration.

An applicant for initial registration as a clinical nurse specialist shall:

1. Be currently licensed as a registered nurse in Virginia;

2. Submit evidence of graduation from an approved program as defined in § 2.5 of these regulations;

3. Submit evidence of current specialty certification from a national certifying organization as defined in § 1.1 of these regulations; and

4. Submit the required application and fee.

B. Renewal of registration.

1. Registration as a clinical nurse specialist shall be renewed biennially at the same time the registered nurse license is renewed.

2. The clinical nurse specialist shall complete the renewal application and return it with the required fee and evidence of current specialty certification unless registered in accordance with an exception.

3. Registration as a clinical nurse specialist shall lapse if the registered nurse license is not renewed and may be reinstated as follows:

a. Reinstatement of R.N. license;

b. Payment of reinstatement and current renewal fees; and

c. Submission of evidence of continued specialty certification unless registered in accordance with an exception.

§ 3.11. Clinical nurse specialist practice.

A. The practice of clinical nurse specialists shall be consistent with the

1. Education required in § 2.5 of these regulations, and

2. Experience required for specialist certification.

B. The clinical nurse specialist shall provide those advanced nursing services that are consistent with the standards of specialist practice as established by a national certifying organization for the designated specialty and in accordance with the provisions of Title 54.1 of the Code of Virginia.

C. Advanced practice as a clinical nurse specialist shall include but shall not be limited to performance as an expert clinician to:

1. Provide direct care and counsel to individuals and groups;

2. Plan, evaluate and direct care given by others; and

3. Improve care by consultation, collaboration, teaching and the conduct of research.

PART IV.
DISCIPLINARY PROVISIONS.

§ 4.1. The board has the authority to deny, revoke or suspend a license issued, or to otherwise discipline a licensee upon proof that the licensee has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

A. Fraud or deceit shall mean, but shall not be limited to:

1. Filing false credentials;

2. Falsely representing facts on an application for initial license, reinstatement or renewal of a license; or

3. Giving or receiving assistance in writing the licensing examination.

B. Unprofessional conduct shall mean, but shall not be limited to:

1. Performing acts beyond the limits of the practice of professional or practical nursing as defined in Chapter 30 of Title 54.1, or as provided by §§ 54.1-2901 and 54.1-2957 of the Code of Virginia;

2. Assuming duties and responsibilities within the practice of nursing without adequate training or when competency has not been maintained;

3. Obtaining supplies, equipment or drugs for personal or other unauthorized use;

4. Employing or assigning unqualified persons to perform functions that require a licensed practitioner of nursing;

5. Falsifying or otherwise altering patient or employer records;

6. Abusing, neglecting or abandoning patients or clients; or

7. Practice of a clinical nurse specialist beyond that defined in § 3.11 of these regulations.

8. Holding self out as or performing acts constituting the practice of a clinical nurse specialist unless so registered by the board.

§ 4.2. Any sanction imposed on the registered nurse license of a clinical nurse specialist shall have the same effect on the clinical nurse specialist registration.

PART V.
CERTIFIED NURSE AIDES.

§ 5.1. Definitions.

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

"Nurse aide education program" means a program designed to prepare nurse aides for certification.

"Nursing facility" means ~~a licensed nursing home or a~~ *an entity which is certified for* Medicare or Medicaid ~~certified skilled or intermediate care facility or unit~~ *long term care reimbursement* .

"Primary instructor" means a registered nurse who is responsible for teaching and evaluating the students enrolled in a nurse aide education program.

"Program coordinator" means a registered nurse who is administratively responsible and accountable for a nurse aide education program.

"Program provider" means an entity which conducts a nurse aide education program.

§ 5.2. Delegation of authority.

The executive director of the board shall issue a certificate as a certified nurse aide to each applicant who qualifies for such a certificate under §§ 54.1-3025, 54.1-3026 and 54.1-3028 of the Code of Virginia.

§ 5.3. Nurse aide education programs.

A. Establishing a nurse aide education program.

1. A program provider wishing to establish a nurse aide education program shall submit an application to the board at least 90 days in advance of the expected opening date.

2. The application shall provide evidence of the ability of the institution to comply with § 5.3 B of these regulations.

3. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.

4. If approval is denied the program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

B. Maintaining an approved nurse aide education program.

To maintain approval, the nurse aide education program shall demonstrate evidence of compliance with the following essential elements:

1. Curriculum content and length as set forth in §§ 5.3 D and 5.3 G of these regulations.

2. Maintenance of qualified instructional personnel as set forth in § 5.3 C of these regulations.

3. Classroom facilities that meet requirements set forth in § 5. 3 H of these regulations.

4. Maintenance of records as set forth in § 5.3 E of these regulations.

5. Skills training experience in a nursing facility which has not been subject to penalty or penalties as provided in 42 FR 483151(b)(2) (Medicare and Medicaid Programs: Nurse Aide Training and Competency Evaluation Programs, effective April 1, 1992) in the past two years.

6. Agreement that board representatives may make unannounced visits to the program.

7. Impose no fee for any portion of the program on any nurse aide who, on the date on which the nurse aide begins the program, is either employed or has an offer of employment from a nursing facility.

8. Must report all substantive changes in subdivisions 1 through 7 of § 5.3 B of these regulations within 10 days of the change to the board.

C. Instructional personnel.

1. Program coordinator.

a. The program coordinator in a nursing facility based program may be the director of nursing services. The director of nursing may assume the administrative responsibility and accountability for the nurse aide education program but shall not engage in the actual classroom and clinical teaching.

b. The primary instructor may be the program coordinator in any nurse aide education program.

2. Primary instructor.

a. Qualifications.

(1) The primary instructor, who does the actual teaching of the students, shall hold a current Virginia license as a registered nurse; and

(2) Shall have two years of experience as a registered nurse and at least one year of experience within the previous five years in the provision of long term care facility services. Such experience may include, but not be limited to, employment in a nurse aide education program or employment in or supervision of nursing students in a nursing facility or unit, geriatrics department, chronic care hospital, home care or other long-term care setting. Experience should include varied responsibilities, such as direct resident care, supervision and education.

b. Responsibilities. The primary instructor shall:

(1) Participate in the planning of each learning experience;

(2) Ensure that course objectives are accomplished;

(3) Ensure that the provisions of § 5.3 C 6 of these regulations are maintained;

(4) Maintain records as required by § 5.3 E of these regulations; and

(5) Perform other activities necessary to comply with § 5.3 B of these regulations.

(6) Ensure that students do not perform services for which they have not received instruction and been found proficient by the instructor.

3. Other instructional personnel.

a. Qualifications.

(1) A registered nurse shall:

(a) Hold a current Virginia license as a registered nurse; and

(b) Have had at least one year, within the preceding five years, of direct patient care experience as a registered nurse with the elderly or chronically ill, or both, of any age.

(2) A licensed practical nurse shall:

(a) Hold a current Virginia license as a practical nurse;

(b) Hold a high school diploma or equivalent;

(c) Have been graduated from a state-approved practical nursing program; and

(d) Have had at least two years, within the preceding five years, of direct patient care experience with the elderly or chronically ill, or both, of any age.

b. Responsibilities. Other personnel shall provide instruction under the general supervision of the primary instructor.

4. Prior to being assigned to teach the nurse aide education program, all instructional personnel shall demonstrate competence to teach adults by one of the following:

a. Complete satisfactorily a "train-the-trainer

program approved by the board. Such a program shall be approved by the board for five years, at which time the sponsor must request reapproval of the program. The content of the program must include:

(1) Basic principles of adult learning;

(2) Teaching methods and tools for adult learners; and

(3) Evaluation strategies and measurement tools for assessing the learning outcomes; or

b. Complete satisfactorily a credit or noncredit course or courses approved by the board. Such courses shall be evaluated for approval by the board upon request from the individual taking the course. The content of such credit or noncredit course shall be comparable to that described in § 5.3 C 4 a of these regulations; or

c. Provide evidence acceptable to the board of experience in teaching adult learners within the preceding five years.

5. The program may utilize resource personnel who have had at least one year of experience in their field to meet the planned program objectives for specific topics.

6. When students are giving direct care to clients in clinical areas, instructional personnel must be on site *solely* to supervise the students ~~and the~~ . *The* ratio of students to each instructor shall not exceed 10 students to one instructor.

D. Curriculum.

1. [~~The objective of the nurse aide education program shall be to prepare a nurse aide to provide quality services to clients under the supervision of licensed personnel.~~] The graduate of the nurse aide education program shall be prepared to:

a. Communicate and interact competently on a one-to-one basis with the clients;

b. Demonstrate sensitivity to clients' emotional, social, and mental health needs through skillful directed interactions;

c. Assist clients in attaining and maintaining functional independence;

d. Exhibit behavior in support and promotion of clients' rights; and

e. Demonstrate skills in observation and documentation needed to participate in the assessment of clients' health, physical condition and well-being.

2. Content. The curriculum shall include, but shall not be limited to, classroom and clinical instruction in the following:

a. Initial core curriculum ~~(minimum 16 hours)~~ . ~~The classroom instruction prior to the direct involvement~~ *Prior to the direct contact* of a student with a nursing facility client , ~~must include, at a minimum, the topics listed below~~ *a total of at least 16 hours of instruction in the following areas must be presented* :

(1) Communication and interpersonal skills,

(2) Infection control,

(3) Safety and emergency procedures, including the Heimlich Maneuver,

(4) Promoting client independence, and

(5) Respecting clients' rights.

b. Basic skills.

(1) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

(2) Measuring and recording routine vital signs.

(3) Measuring and recording height and weight.

(4) Caring for the clients' environment.

(5) Measuring and recording fluid and food intake and output.

(6) Performing basic emergency measures.

(7) Caring for client when death is imminent.

c. Personal care skills.

(1) Bathing and oral hygiene.

(2) Grooming.

(3) Dressing.

(4) Toileting.

(5) Assisting with eating and hydration including proper feeding techniques.

(6) Caring for skin.

(7) Transfer, positioning and turning.

d. Individual client's needs including mental health and social service needs.

(1) Identifying the psychosocial characteristics of the populations who reside in nursing homes.

(2) Modifying the aide's behavior in response to behavior of clients.

(3) Identifying developmental tasks associated with the aging process.

(4) Providing training in and the opportunity for self care according to clients' capabilities.

(5) Demonstrating principles of behavior management by reinforcing appropriate behavior and causing inappropriate behavior to be reduced or eliminated.

(6) Demonstrating skills supporting age-appropriate behavior by allowing the client to make personal choices, providing and reinforcing other behavior consistent with clients' dignity.

(7) Utilizing client's family or concerned others as a source of emotional support.

(8) Responding appropriately to client's behavior.

e. Care of the cognitively impaired client.

(1) Using techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others).

(2) Communicating with cognitively impaired residents.

(3) Demonstrating and understanding the behavior of cognitively impaired residents.

(4) Responding appropriately to the behavior of cognitively impaired residents.

(5) Using methods to reduce the effects of cognitive impairment.

f. Skills for basic restorative services.

(1) Using assistive devices in transferring, ambulation, eating and dressing.

(2) Maintaining range of motion.

(3) Turning and positioning, both in bed and chair.

(4) Bowel and bladder training.

(5) Caring for and using prosthetic *and orthotic* devices.

(6) Teaching the client in self-care according to the client's abilities as directed by a supervisor.

g. Clients' rights.

(1) Providing privacy and maintaining confidentiality.

(2) Promoting the client's right to make personal choices to accommodate individual needs.

(3) Giving assistance in resolving grievances *and disputes* .

(4) Providing assistance necessary to participate in client and family groups and other activities.

(5) Maintaining care and security of the client's personal possessions.

(6) Promoting the resident's rights to be free from abuse, mistreatment and neglect and the need to report any instances of such treatment to appropriate staff.

(7) Avoiding the need for restraints in accordance with current professional standards.

h. Legal aspects of practice as a certified nurse aide.

3. Unit objectives.

a. Objectives for each unit of instruction shall be stated in behavioral terms ~~including~~ *which are* measurable ~~performance criteria~~ .

b. Objectives shall be reviewed with the students at the beginning of each unit.

E. Records.

1. Each nurse aide education program shall develop an individual ~~performance~~ record of major ~~duties and~~ skills taught *and the date of performance by the student* . ~~This record will consist of, at a minimum, a listing of the duties and skills expected to be learned in the program, space to record when the nurse aide student performs this duty or skill, spaces to note satisfactory or unsatisfactory performance, the date of performance, and the instructor supervising the performance.~~ At the completion of the nurse aide education program, the nurse aide ~~and his employer~~ must receive a copy of this record.

2. A record of the reports of graduates' performance on the approved competency evaluation program shall be maintained.

3. A record that documents the disposition of complaints against the program shall be maintained.

F. Student identification.

The nurse aide students shall wear identification that is clearly recognizable to clients, visitors and staff.

G. Length of program.

1. The program shall be at least 80 hours in length.

2. The program shall provide for at least 16 hours of instruction prior to direct ~~involvement~~ *contact* of a student with a nursing facility client.

3. Skills training in clinical settings shall be at least 40 hours. Five of the clinical hours may be in a setting other than a nursing home.

4. Employment orientation to facilities used in the education program must not be included in the 80 hours allotted for the program.

H. Classroom facilities.

The nurse aide education program shall provide facilities that meet federal and state requirements including

1. Comfortable temperatures.

2. Clean and safe conditions.

3. Adequate lighting.

4. Adequate space to accommodate all students.

5. All equipment needed, including audio-visual equipment and that needed for simulating resident care.

I. Program review.

1. Each nurse aide education program shall be reviewed on site by an agent of the board at least every two years following initial review.

2. The report of the site visit shall be presented to the board for consideration and action. The report and the action taken by the board shall be sent to the appropriate administrative officer of the program.

3. The program coordinator shall prepare and submit a program evaluation report on a form provided by the board in the intervening year that an on site review is not conducted.

4. A nurse aide education program shall continue to be approved provided the requirements set forth in subsections B through H of § 5.3 of these regulations are maintained.

5. If the board determines that a nurse aide education program is not maintaining the requirements of subsections B through H of § 5.3 of these regulations, with the exception of § 5.3 B 5 of these regulations, the program ~~shall~~ *may* be placed on conditional approval and be given a reasonable period of time to correct the identified deficiencies. The program provider may request a hearing before the board and the provisions of the Administrative Process Act shall apply. (§ 9-6.14:1 et seq.)

6. If the program *either* fails *to maintain the requirements of subsections B through H of § 5.3 of these regulations or* to correct the identified deficiencies within the time specified by the board, the board [~~shall~~ *may*] withdraw the approval following a hearing held pursuant to the provisions of the Administrative Process Act. (§ 9-6.14:1 et seq.)

J. Curriculum changes.

Changes in curriculum must be approved by the board prior to implementation and shall be submitted for approval at the time of a report of a site visit or the report submitted by the program coordinator in the intervening years.

K. Interruption of program.

1. When a program provider does not wish to admit students for a period not to exceed one year, the provider may request that the program be placed on inactive status and shall not be subject to compliance with § 5.3 B of the regulations for the specified time.

2. Unless the program provider notifies the board that it intends to admit students, the program will be considered closed at the end of the one-year period and be subject to the requirements of § 5.3 L of these regulations.

~~K.~~ *L.* Closing of a nurse education program.

When a nurse aide education program closes, the program provider shall:

1. Notify the board of the date of closing.

2. Submit to the board a list of all graduates with the date of graduation of each.

§ 5.4. Nurse aide competency evaluation.

A. The board may contract with a test service for the development and administration of a competency evaluation.

B. All individuals completing a nurse aide education program in Virginia shall successfully complete the competency evaluation required by the board prior to making application for certification and to using the title Certified Nurse Aide.

C. The board shall determine the minimum passing score on the competency evaluation.

§ 5.5. Nurse aide registry.

A. Initial certification by examination.

1. To be placed on the registry and certified, the nurse aide must:

a. Satisfactorily complete a nurse aide education program approved by the board; or

b. Be enrolled in a nursing education program preparing for registered nurse or practical nurse licensure, have completed at least one nursing course which includes clinical experience involving client care; or

c. Have completed a nursing education program preparing for registered nurse licensure or practical nurse licensure; and

d. Pass the competency evaluation required by the board; and

e. Submit the required application and fee to the board.

2. Initial certification by endorsement.

a. A graduate of a state approved nurse aide education program who has satisfactorily completed a competency evaluation program and ~~been~~ *is currently* registered in another state may apply for certification in Virginia by endorsement.

b. An applicant for certification by endorsement shall submit the required application and fee and submit the required verification form to the credentialing agency in the state where registered, certified or licensed within the last two years.

3. Initial certification shall be for two years.

B. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, an application for renewal shall be mailed by the board to the last known address of each currently registered certified nurse aide.

2. The certified nurse aide shall return the completed application with the required fee and verification of performance of nursing-related activities for compensation within the preceding two years.

3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.

4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat ~~an approved nurse aide education program~~ and *pass* the nurse aide competency evaluation prior to applying for recertification.

C. Reinstatement of lapsed certification.

An individual whose certification has lapsed shall file the required application and renewal fee and:

1. Verification of performance of nursing-related activities for compensation *prior to the expiration date of the certificate and* within the preceding two years; or

2. When nursing activities have not been performed during the preceding two years, evidence of having repeated ~~an approved nurse aide education program~~ and *passed* the nurse aide competency evaluation.

D. Evidence of change of name.

A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate or court order authorizing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

E. Requirements for current mailing address.

1. All notices required by law and by these regulations to be mailed by the board to any certificate holder shall be validly given when mailed to the latest address on file with the board.

2. Each certificate holder shall maintain a record of his current mailing address with the board.

3. Any change of address by a certificate holder shall be submitted in writing to the board within 30 days of such change.

§ 5.6. The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that he has violated any of the provisions of § 54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit shall mean, but shall not be limited to:

a. Filing false credentials;

b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or

c. Giving or receiving assistance in taking the competency evaluation.

2. Unprofessional conduct shall mean, but shall not be limited to:

a. Performing acts beyond those authorized for practice as a nurse aide as defined in Chapter 30 of Title 54.1;

b. Assuming duties and responsibilities within the practice of a nurse aide without adequate training or when competency has not been maintained;

c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;

d. Falsifying or otherwise altering client or employer records;

e. Abusing, neglecting or abandoning clients; or

f. Having been denied a license or having had a license issued by the board revoked or suspended.

PART VI.
MEDICATION ADMINISTRATION TRAINING PROGRAM.

§ 6.1. Medication administration training program.

A. Establishing a medication administration training program.

1. A program provider wishing to establish a medication administration training program pursuant to § 54.1-3408 of the Code of Virginia shall submit an application to the board at least 90 days in advance of the expected beginning date.

2. The application shall be considered at a meeting of the board. The board shall, after review and consideration, either grant or deny approval.

3. If approval is denied, the program provider may request a hearing before the board, and the provisions of the Administrative Process Act shall apply (§ 9-6.14:1 et seq.).

B. Qualifications of instructional personnel.

Instructors shall be licensed health care professionals who, consistent with provisions of the Drug Control Act, are authorized to administer, prescribe or dispense drugs and who have completed a program designed to prepare the instructor to teach the course as it applies to the clients in the specific setting in which those completing the course will administer medications.

C. Content.

The curriculum shall include classroom instruction and practice in the following:

1. Preparing for safe administration of medications to clients in specific settings by:

a. Demonstrating an understanding of the client's rights regarding medications, treatment decisions and confidentiality.

b. Recognizing emergencies and other health-threatening conditions and responding accordingly.

c. Identifying medication terminology and abbreviations.

2. Maintaining aseptic conditions by:

a. Implementing universal precautions.

b. Insuring cleanliness and disinfection.

c. Disposing of infectious or hazardous waste.

3. Facilitating client self-administration or assisting with medication administration by:

a. Reviewing administration records and prescriber's orders.

b. Facilitating client's awareness of the purpose and effects of medication.

c. Assisting the client to interpret prescription labels.

d. Observing the five rights of medication administration and security requirements appropriate to the setting.

e. Following proper procedure for preparing medications.

f. Measuring and recording vital signs to assist the client in making medication administration decisions.

g. Assisting the client to administer oral medications.

h. Assisting the client with administration of prepared instillations and treatments of:

(1) Eye drops and ointments.

(2) Ear drops.

(3) Nasal drops and sprays.

(4) Topical preparations.

(5) Compresses and dressings.

(6) Vaginal and rectal products.

(7) Soaks and sitz baths.

(8) Inhalation therapy.

(9) Oral hygiene products.

i. Reporting and recording the client's refusal to take medication.

j. Documenting medication administration.

k. Documenting and reporting medication errors.

l. Maintaining client records according to facility policy.

m. Sharing information with other staff orally and by using documents.

n. Storing and securing medications.

o. Maintaining an inventory of medications.

p. Disposing of medications.

4. Facilitating client self-administration or assisting with the administration of insulin.

Instruction and practice in the administration of insulin shall be included only in those settings where required by client needs and shall include:

a. Cause and treatment of diabetes.

b. The side effects of insulin.

c. Preparation and administration of insulin.

VA.R. Doc. No. R94-342; Filed December 8, 1993, 11:15 a.m.

BOARD OF PSYCHOLOGY

Title of Regulation: **VR 565-01-2. Regulations Governing the Practice of Psychology.**

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Effective Date: January 27, 1994.

Summary:

The regulations will replace emergency regulations made effective on March 16, 1993, which increase licensure renewal fees for psychologists and school psychologists. The regulations also increase the application fees for the clinical psychology license. These increased fees are necessary according to § 54.1-113 of the Code of Virginia which requires that the board adjust its fees so that revenues are within 10% (plus or minus) of the cost of board operations.

The regulations also amend examination fees to reflect the direct cost to the candidate for the examination services.

Additionally, these regulations set a time limit of one full calendar year for the required residency requirement for psychology (clinical) trainees. This requirement was previously set out in regulation but was inadvertently omitted from the Regulations Governing the Practice of Psychology effective January 27, 1993.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9913. There may be a charge for copies.

VR 565-01-2. Regulations Governing the Practice of Psychology.

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:

"Applicant" means a person who submits a complete application for licensure with the appropriate fees.

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Clinical psychologist" means a psychologist who is competent in the diagnosis, prevention, treatment, and amelioration of psychological problems, behavioral or emotional disorders or conditions or mental conditions, by the application of psychological principles, psychological methods, or psychological procedures including but not limited to psychological assessment and evaluation and psychotherapy, which does not amount to the practice o

medicine. The definition shall not be construed to limit or restrict any person licensed by a health regulatory board as defined in § 54.1-2500 from rendering services which they are licensed to provide.

"Practice of clinical psychology" means the offering by an individual of services to the public as a clinical psychologist.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Internship" means a supervised and planned practical experience obtained in an integrated training program in a setting included as an integral and required part of the applicant's program of study.

"Nonclinical services" means such psychological services as consultation and evaluation for agencies, industry and other professionals, and shall not mean the assessment, diagnosis, or treatment of behavioral, emotional or nervous disorders.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Psychologist" means a person trained in the application of established principles of learning, motivation, perception, thinking, and emotional relationships to problems of personality evaluation, group relations, and behavior adjustment.

"Practice of psychology" means the rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, methods, or procedures of the science and profession of psychology, and which includes, but is not limited to:

1. *"Measuring and testing,"* which consists of the psychological assessment and evaluation of abilities, attitudes, aptitudes, achievements, adjustments, motives, personality dynamics or other psychological attributes of individuals, or groups of individuals, by means of standardized measurements or other methods, techniques or procedures recognized by the science and profession of psychology.

2. *"Counseling and psychotherapy,"* which consists of the application of principles of learning and motivation in an interpersonal situation with the objectives of modification of perception and adjustment, consisting of highly developed skills, techniques, and methods of altering through learning processes, attitudes, feelings, values, self-concept, personal goals and adaptive patterns.

3. *"Psychological consulting,"* which consists of interpreting or reporting upon scientific fact or theory in psychology, rendering expert psychological opinion, psychological evaluation, or engaging in applied psychological research.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"School psychologist" means a person who specializes in problems manifested in and associated with educational systems and who utilizes psychological concepts and methods in programs or actions which attempt to improve learning conditions for students or who is employed in this capacity by a public or nonprofit educational institution or who offers to render such services to the public whether or not employed by such an institution.

"Practice of school psychology" means the rendering or offering to render to individuals, groups, organizations, government agencies or the public any of the following services:

1. *"Testing and measuring"* which consists of psychological assessment, evaluation, and diagnosis relative to the assessment of intellectual ability, aptitudes, achievement, adjustment, motivation, personality, or any other psychological attribute of persons as individuals or in groups that directly relates to learning or behavioral problems in an educational setting.

2. *"Counseling"* which consists of professional advisement and interpretive services with children or adults for amelioration or prevention of educationally related problems.

Counseling services relative to the practice of school psychology include, but are not limited to, the procedures of verbal interaction, interviewing, behavior modification, environmental manipulation, and group processes.

Counseling services relative to the practice of school psychology are short term and are situation oriented.

3. *"Consultation"* which consists of educational or vocational consultation or direct educational services to schools, agencies, organizations, or individuals.

Consultation as herein defined is directly related to learning problems and related adjustments.

4. Development of programs such as designing more efficient and psychologically sound classroom situations and acting as a catalyst for teacher involvement in adaptations and innovations

"Supervision" means the ongoing process performed by

a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

§ 1.2. Classification of licensees.

In compliance with Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia, the board classifies licensees as psychologists, school psychologists, or clinical psychologists.

A. Psychologist.

This license covers the practice of psychology, as defined in Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia which is divided into two designated specialties requiring different sets of skills and knowledge: (i) for providers of clinical services and (ii) for providers of nonclinical services. The psychologist license is designated accordingly as either psychologist (clinical) or psychologist (nonclinical). The licensee's scope of practice is delimited by the designation of the license and further by licensee's demonstrable areas of competence.

B. Clinical psychologist.

This license pertains only to the practice of clinical psychology as defined in Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia. The candidate for this license, after further investigation and examination by the board, is recommended to the Virginia Board of Medicine for licensure and subsequent regulation .

C. School psychologist.

This license pertains only to the practice of school psychology as defined in Chapter 36 (§ 54.1-3600 et seq.) of Title 54.1 of the Code of Virginia.

§ 1.3. Fees required by the board.

A. The board has established fees for the following:

1. Registration of residency (per residency request) $100

2. Application processing for:

(a) Graduates of American institutions for licensure as:

(1) Psychologist (clinical or nonclinical) $150

(2) School psychologist $150

(3) Clinical psychologist ..... ~~$350~~ *$450*

(b) Graduates of foreign institutions (in addition to application processing fee) $150

3. Examinations:

(a) Nationally normed standardized examination ..... ~~$160~~ *$325*
~~Effective July 1, 1993~~ ..... ~~$275~~

(b) State written examination ..... ~~$150~~ *$225*

(c) National and state written examinations $490

4. Initial license
.....pro-rated portion of
..... ~~$150 biennial~~ *$95 annual*
.....renewal fee

5. ~~Biennial~~ *Annual* renewal of license ..... ~~$150~~ *$95*

6. Late renewal $10

7. Endorsement to another jurisdiction $10

8. Additional or replacement wall certificate $15

9. Returned check $15

10. Rereview fee $25

B. Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

PART II.
REQUIREMENTS FOR LICENSURE.

§ 2.1. Requirements, general.

A. No person shall practice psychology or school psychology in the Commonwealth of Virginia except as provided in the Code of Virginia and these regulations.

B. No person shall practice clinical psychology in the Commonwealth of Virginia except when licensed by the Virginia State Board of Medicine upon recommendation by the Board of Psychology.

C. Licensure of all applicants under subsections A and B of this section shall be by examination by this board.

D. Every applicant for examination by the board shall:

1. Meet the education and experience requirements prescribed in § 2.2 or § 2.3 of these regulations, whichever is applicable for the particular license sought; and

2. Submit to the executive director of the board, not

less than 90 days prior to the date of the written examination:

a. A completed application, on forms provided by the board;

b. Documentation of having fulfilled the experience requirements of § 2.2 or § 2.3 where applicable; and

c. The application processing fee prescribed by the board; and

3. Have the institution that awarded the graduate degree(s) submit directly to the executive director of the board, at least 90 days prior to the date of the written examination, official transcripts documenting:

a. The graduate work completed; and

b. The degree(s) awarded.

§ 2.2. Education and experience requirements: Graduates of American institutions.

A graduate of an American higher education institution who applies for examination for licensure shall meet the requirements of subsection A, B, or C of this section, whichever is applicable:

A. Psychologists.

1. Psychologist (nonclinical).

a. Program of study. The applicant shall hold a doctorate in psychology from an institution accredited by a regional accrediting agency. Further, the applicant's program must conform to the following criteria for doctoral programs in psychology.

(1) The program, wherever it may be administratively housed, shall be clearly identified and labeled as a psychology program. Such a program shall specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

(2) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(3) There shall be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

(4) The program must be an integrated, organized sequence of study.

(5) There shall be an identifiable psychology faculty and a psychologist responsible for the program.

(6) The program shall have an identifiable body of students who are matriculated in that program for a degree.

b. Education. The applicant's program shall have included at least one three semester-credit hour course in each of the following areas of study:

(1) Statistics and research design;

(2) Physiological psychology or sensation and perception;

(3) Learning/cognition;

(4) Social psychology;

(5) Study of the individual;

(6) History and systems; and

(7) Scientific and professional ethics and standards.

c. Experience. No supervised experience is required for licensure as a psychologist (nonclinical).

2. Psychologist (clinical).

a. The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which:

(1) Was accredited by the American Psychological Association (APA) prior to the applicant's graduation from the program; or

(2) Was accredited by the APA within four years after the applicant graduated from the program; or

(3) If not APA accredited, was a program which met the criteria outlined in § 2.2 A 1 a. Further, the program must have required successful completion by the applicant of all the following:

(a) At least one three-semester-credit hour course in each of the areas of study prescribed in subdivision A 1 b of this section for a psychologist (nonclinical).

(b) At least one three-semester-credit hour course in each of the following additional areas of study:

(i) Personality theory;

(ii) Diagnostic interviewing and behavioral assessment;

(iii) Psychometric, psychodiagnostic, and projective testing;

(iv) Psychopathology;

(v) Psychotherapy, both individual and group; and

(vi) Practicum: Supervision and assessment/diagnosis and psychotherapy; and

(c) A one-year, full-time internship approved by the American Psychological Association (APA) or consistent with the requirements for APA approval and approved by the applicant's doctoral program.

b. Experience. Applicants shall possess post-doctoral experience as defined in this subparagraph and shall inform the board, when they apply, how they propose to meet this experience requirement. This requirement may be met in one of two ways:

(1) By waiver based on lengthy experience. Applicants possessing many years of relevant post-doctoral experience in another jurisdiction may obtain a waiver of residency requirements by demonstrating to the board that they have received the substantial equivalent of the supervised experience required in subdivision A 2 b (2) described below; or

(2) Residency requirements. The applicant under this provision shall show documentation of ~~a previous residency or request approval to begin a current residency with the following conditions:~~ *the successful completion of a one-year, full-time post-doctoral residency, or its equivalent in part-time experience for a period not to exceed three years, consisting of supervised experience in the delivery of clinical services acceptable to the board; or the applicant may request approval to begin a residency with the following conditions:*

a. Applicants shall apply for licensure and residency concurrently.

b. Prior to initiating the proposed residency training, the applicant shall:

(1) Register with the board;

(2) Pay the registration fee;

(3) Submit an agreement signed by the applicant and proposed Virginia licensed supervisor(s) stating the nature of the services to be rendered, the number of hours of supervision, and the nature of the supervision; and

(4) Receive approval from the board to begin the residency training. (Applicants who do not apply before beginning residency training, cannot be guaranteed the residency will be approved.)

c. Supervision shall be provided by a licensed psychologist, clinical psychologist, or school psychologist.

d. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

e. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

f. Residents may not call themselves psychologists, clinical psychologists, or school psychologists; solicit clients; bill for services; or in any way represent themselves as professional psychologists. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology."

g. At the end of the residency training period, the supervisor(s) shall submit to the board, a written evaluation of the applicant's performance.

~~h. The applicant shall not continue in residency status for more than three years.~~

B. Clinical psychologist.

The applicant for examination for licensure as a clinical psychologist shall possess the same educational qualifications and shall have met the same experience requirements as those prescribed for a psychologist (clinical) in subdivisions A 2 a and A 2 b respectively of this section.

C. School psychologist.

1. Education. The applicant shall hold at least a master's degree in school psychology, with a minimum of at least 60 semester credit hours, from a college or university accredited by a regional accrediting agency. The program requirements shall:

a. Reflect a planned, integrated, and supervised program of graduate study as outlined for programs approved by the American Psychological Association (APA) or by the National Council for the Accreditation of Teacher Education (NCATE); and

b. Include an internship approved by the applicant's training program.

2. Experience. Applicants shall possess post-master's degree experience as defined in this section and shall inform the board when they apply as to how they propose to meet this experience requirement. This requirement may be met in one of two ways:

a. By waiver based on lengthy experience. Applicants possessing many years of relevant post-master's degree experience in another jurisdiction may obtain a waiver of residency requirements by demonstrating to the board that they have received the substantial equivalent of the supervised experience required in subdivision C 2 b described below:

b. By residency. The applicant shall show documentation of a previous full-time residency of at least one school year, or the equivalent in part-time experience or request approval to begin a current residency with the following conditions:

(1) Applicants shall apply for licensure and residency concurrently.

(2) Prior to the proposed residency training, the applicant shall:

(a) Register with the board;

(b) Pay the registration fee;

(c) Submit an agreement signed by the applicant and proposed Virginia licensed supervisor(s) stating the nature of the services to be rendered, the number of hours of supervision, and the nature of the supervision; and

(d) Receive approval from the board to begin the residency training. (Applicants who do not apply before beginning residency training, cannot be guaranteed the residency will be approved).

c. Supervision shall be provided by a licensed school psychologist, licensed psychologist, or licensed clinical psychologist.

d. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

e. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

f. Residents may not call themselves psychologists, clinical psychologists, or school psychologists; solicit clients; bill for services; or in any way represent themselves as professional psychologists. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in School Psychology."

g. At the end of the residency training period, the supervisor(s) shall submit to the board a written evaluation of the applicant's performance.

h. The applicant shall not continue in residency status for more than three years.

D. Applicants for additional licenses.

To obtain additional licenses, all requirements shall be met as prescribed by the board. Applicants shall complete a new application and submit new application fees. A complete new application process may be initiated at the board's discretion.

§ 2.3. Graduates of foreign institutions.

A graduate of a foreign higher education institution who applies for examination for licensure as a psychologist or clinical psychologist shall:

1. Hold a doctorate in psychology;

2. Present documentation that the degree is from a planned, integrated, and supervised program of graduate study that meets requirements judged by the board to be equivalent with the requirements for approval by the American Psychological Association (APA) or equivalent with those requirements prescribed by the board and met by approved domestic institutions;

3. Meet the course and practicum requirements outlined in § 2.2; and

4. Pay the application processing fee prescribed in § 1.3 for graduates of foreign institutions.

§ 2.4. Out-of-state applicants with lengthy experience.

An applicant who is licensed in another state may practice in Virginia in accordance with the provisions of this section.

A. Until such time as the applicant receives a Virginia license, the applicant may practice only under the supervision of a Virginia licensee.

B. The supervised practice of the applicant shall be performed in accordance with all of the provisions prescribed in these regulations for a residency. After a Virginia license is granted, the applicant may terminate residency status and begin independent practice.

C. The applicant shall take the examination(s) deemed appropriate by the board within one year of board approval of application.

D. The applicant may not practice independently until

the Virginia license is granted.

PART III.
EXAMINATIONS.

§ 3.1. General examination requirements.

A. In order to be licensed, each candidate shall take and pass the examination(s) determined by the board to be required according to the candidate's individual qualifications under the general provisions of this section. The complete examination process consists of two components.

1. A nationally normed standardized examination in the practice of psychology;

2. The Board of Psychology written examination(s).

B. An applicant enrolled in an approved residency training program required in § 2.2 who has met all requirements for licensure except completion of that program shall be eligible to take both the national and state written examinations.

C. Waivers; modifications.

1. Diplomate applicant. The board may waive the written examination(s) , except for the state jurisprudence examination, for an applicant who has been awarded a diploma by the American Board of Professional Psychology in either clinical, counseling, or school psychology.

2. Endorsement. The board may waive only the national written examination for an applicant licensed or certified in another jurisdiction by standards and procedures equivalent to those of the board and meeting the educational requirements set forth in these regulations. The state written examination(s) cannot be waived.

D. Notice.

1. At least 30 days prior to the date of examinations, the executive director will notify all candidates in writing of the time and place of examinations.

2. The candidate shall then submit the applicable fees.

3. If the candidate fails to appear for the examination without providing written notice at least two week before the examination, the examination fee shall be forfeited.

E. Deferrals by candidate: time limit.

A candidate licensed in another jurisdiction shall follow the requirements in § 2.2.

A candidate approved by the board to sit for an examination and who has never been licensed in any jurisdiction shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed:

1. The initial board approval to sit for the examination shall then become invalid; and

2. In order to be considered for the examination later, the applicant shall file a complete new application with the board and pay the applicable fee.

§ 3.2. Written examinations.

A. The nationally normed standardized examination in the practice of psychology.

1. This examination shall consist of multiple-choice questions that sample a broad range of psychology content areas.

2. A passing grade shall be a score that is determined by the board for all doctoral-level examinees.

B. The Board of Psychology written examination.

1. These examination(s) may consist of essay or multiple choice questions or both related to:

a. The practice of psychology; and

b. Virginia laws and board regulations governing the practice of psychology.

2. A passing score shall be determined by the board.

§ ~~3.4.~~ *3.3.* Reexamination.

Reexamination of candidates will be required only on the examinations failed.

A. After paying the reexamination fee, a candidate may be reexamined once within a 12-month period after the failed examinations without filing a formal reapplication and without presenting evidence of additional education or experience.

B. A candidate who fails any examination twice shall wait at least one year between the second failure and the next reexamination. Such candidate shall submit to the board:

1. An updated application;

2. Documentation of additional education or experience gained since the last failure; and

3. New application and examination fee(s) as prescribed by the board.

PART IV.
LICENSURE.

§ 4.1. Licensure.

A. Upon payment of the prorated portion of the biennial licensure fee prescribed by the board, the board will issue to each successful candidate a license to practice as a psychologist or school psychologist.

B. The board will recommend to the Board of Medicine each successful candidate the Board of Psychology examines for licensure as a clinical psychologist.

C. A psychologist, clinical psychologist or a school psychologist who desires to practice in other areas of psychology shall obtain a license from this board for the additional area in which the licensee seeks to practice.

PART V.
LICENSURE RENEWAL; REINSTATEMENT.

§ 5.1. ~~Biennial~~ *Annual* renewal of licensure.

Every license issued by the board shall expire on June 30 of each ~~odd-numbered~~ year.

A. Every licensee who intends to continue to practice shall, by June 30 of each ~~odd-numbered~~ year, submit to the board:

1. A license renewal application on forms supplied by the board; and

2. The renewal fees prescribed in § 1.3.

B. Failure of a licensee to receive a renewal notice and application form(s) from the board shall not excuse the licensee from the renewal requirement.

§ 5.2. Late renewal; reinstatement.

A. A person whose license has expired may renew it within ~~four~~ *two* years after its expiration date by paying the penalty fee prescribed in § 1.3 and the license renewal fee for each year the license was not renewed.

B. A person whose license has not been renewed for ~~four~~ *two* years or more and who wishes to resume practice shall:

1. Present evidence satisfactory to the board regarding continued competency to perform the duties regulated by the board; and

2. Upon approval for reinstatement, pay the penalty fee and the license fee for each renewal period the license was not renewed, as prescribed by the board and pay a rereview fee as prescribed in § 1.3.

PART VI.
ADVISORY COMMITTEES.

§ 6.1. Advisory and examining committees.

A. The board may establish examining and advisory committees to assist it in evaluating the professional qualifications of applicants and candidates for licensure and in other matters.

B. The board may establish an advisory committee to evaluate the mental or emotional competence of any licensee or candidate for licensure when such competence is at issue before the board.

C. The chair of all advisory and examining committees shall be a member of the Board of Psychology or board designee who will moderate the proceedings and report the results to the full board.

PART VII.
STANDARDS OF PRACTICE; UNPROFESSIONAL CONDUCT; DISCIPLINARY ACTIONS; REINSTATEMENT.

§ 7.1. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons licensed by the board shall:

1. Provide only services and use only techniques for which they are qualified by training and experience.

2. When advertising services to the public, ensure that such advertising is neither fraudulent nor misleading.

3. Represent accurately their competency, education, training and experience.

4. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services.

5. Make advance financial arrangements that safeguard the best interests of and are clearly understood by their clients.

6. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services.

7. Avoid dual relationships with clients that could impair professional judgment or compromise the client's well being (to include but not limited to treatment of close friends, relatives, employees and sexual intimacies with clients; bartering services; romantic or sexualized relationships with any current

supervisee.

8. Avoid any action that will violate or diminish the legal and civil rights of clients or of others who may be affected by the action.

9. Keep confidential their professional relationships with clients, including their records and reports, except when a client is a danger to self or others, or when the licensee is under a court order to disclose such information.

10. Terminate a professional psychological relationship when it is clear that services are not benefiting the client.

11. Ensure that the welfare of clients is not compromised in any experimentation or research involving those clients.

12. Report to the board known violations of the laws and regulations governing the practice of psychology.

13. Represent oneself as a licensed psychologist only when licensed by the board as a psychologist.

14. Represent oneself as a licensed school psychologist only when licensed by the board as a school psychologist.

15. Represent oneself as a licensed clinical psychologist or otherwise use variations of the description clinical psychology to describe one's practice only when licensed by the Board of Medicine as a clinical psychologist.

16. Not represent oneself as "board certified" without specifying the complete name of the specialty board.

17. Keep pertinent, confidential records for at least seven years with adults and organization and 10 years with minors after termination of services to any consumer.

§ 7.2. Grounds for revocation, suspension, or denial of renewal of license.

A. In accordance with § 54.1-2400 of the Code of Virginia, the board may, after a hearing, revoke, suspend or decline to renew a license for just cause.

B. Action by the board to revoke, suspend or decline to renew a license shall be taken in accord with the following conduct:

1. Conviction of a felony or misdemeanor involving moral turpitude.

2. Procuring of a license by fraud or misrepresentation.

3. Misuse of drugs or alcohol to the extent that it interferes with professional functioning.

4. Negligence in professional conduct or violation of practice standards.

5. Performing functions outside areas of competency.

6. Mental, emotional, or physical incompetence to practice the profession.

7. Violating or aiding and abetting another to violate any provision of Chapter 36 of Title 54.1 of the Code of Virginia; any other statute applicable to the practice of the profession regulated; or any provision of these regulations.

C. Appeal of decision.

An appeal may be made to the board for reinstatement upon good cause or as a result of substantial new evidence being obtained that would alter the determination reached in subsection B of this section.

§ 7.3. Reinstatement following disciplinary action.

A. Any person whose license has been suspended, revoked, or not renewed by the board under the provisions of § 7.2 may, two years subsequent to such board action, submit a new application to the board for licensure.

B. The board in its discretion may, after a hearing, grant the reinstatement sought in subsection A of this section.

C. The applicant for such reinstatement, if approved, shall be licensed upon payment of the appropriate fees applicable at the time of reinstatement, as prescribed by the board.

NOTICE: The forms used in administering the Regulations Governing the Practice of Psychology are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Board of Psychology, 6606 West Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Application for Examination or Licensure, Form - 1

Registration for Post-Doctorate Degree or Post-Master's Degree Residency Training Experience for the Board of Psychology, Form - 2

Post-Doctorate Degree or Post-Master's Degree Verification of Supervision, Form - 3

Internship Verification, Form - 4

Employer Verification, Form - 5

Licensure Verification, Form - 6

VA.R. Doc. No. R94-307; Filed December 2, 1993, 2:57 p.m.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

Title of Regulation: **VR 615-45-5. Investigation of Child Abuse and Neglect in Out of Family Complaints.**

Statutory Authority: §§ 63.1-25 and 63.1-248.6 of the Code of Virginia.

Effective Date: January 26, 1994.

Summary:

This regulation establishes policy for investigation of child abuse and neglect in out of family complaints. It establishes, by definition, out of family situations that are appropriate for such investigation.

Only one revision will result in a substantive change in the actual procedures to be followed by the local agency in conducting these investigations. In § 2.11, Determine Whether or not Abuse/Neglect Occurred, the item regarding designating the facility itself as involved in the abuse/neglect disposition has been deleted. Child protective services dispositions will be limited to actions by individuals; regulatory agencies are better able to track and divulge information on actions attributable to the facility per se.

It was determined that several sections of the regulation are already in effect (or will be in effect) in the department's policy manual exactly as stated in the proposed regulation. These are generic requirements applicable to all child abuse/neglect investigations, not just those in out of family complaints. Accordingly, these items do not appear in the revised regulation:

In § 2.2, Establish Validity of Complaint; § 2.3, Obtain a Complaint Number; portions of § 2.8, Contact with the Victim Child; portions of § 2.9, Contact with the Alleged Abuser/Neglector; § 2.11, Determine Whether or Not Abuse/Neglect Occurred; § 2.12, Risk Assessment; § 2.13, Documentation; § 2.14, Report the Findings; and § 2.15, Case Management.

Additional revisions have been made in Part II because it was determined that the level of detail is more appropriate for inclusion in the department's policy manual, including:

In § 2.4, Initial Assessment, notification requirements upon removal of a child from a facility; in § 2.5, Involvement of Regulatory Agencies, the list of facility types and regulatory authority contacts; in § 2.7, Contact with the Facility Administrator, methods for initial contact; and in § 2.9 Contact with the Alleged Abuser/Neglector, certain items regarding notification and taping of interviews.

In § 2.17, Investigating Child Abuse or Neglect in Out of Family Complaints, the details regarding qualifications of local staff have been moved to appear in a department document rather than in the regulation.

Summary of Public Comment and Agency Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the Office of the Registrar of Regulations.

Agency Contact: Copies of the regulation may be obtained from Peggy Friedenberg, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820. There may be a charge for copies.

VR 615-45-5. Investigation of Child Abuse and Neglect in Out of Family Complaints.

PART I.
DEFINITIONS.

§ 1.1. Definitions.

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

"Caretaker," for the purpose of this regulation, means any individual [~~or entity~~] determined to have the responsibility of caring for a child.

"Central Registry" means the name index of individuals involved in child abuse and neglect reports maintained by the Virginia Department of Social Services.

"Child Protective Services" means the identification, receipt and immediate investigation of complaints and reports of child abuse and neglect for children under 18 years of age. It also includes documenting, arranging for, and providing social casework and other services for the child, his family, and the alleged abuser.

"Complaint" means a valid report of suspected child abuse/neglect which must be investigated by the local department of social services.

" [Child] day [~~care~~] center" means a [~~facility operated for the purpose of providing care,~~ child day program operated in other than the residence of the provider or any of the children in care, responsible for the supervision,] protection, and [~~guidance to a group of children separated from their parents during a part of the~~

~~day~~ well-being of children during absence of a parent or guardian, as defined in § 63.1-195 of the Code of Virginia.] For the purpose of these regulations, the term shall be limited to include only state [~~regulated~~ licensed child] day [~~care~~] centers and [~~church exempt~~ religiously exempted child] day [~~care~~] centers.

["Department" means the Department of Social Services.]

["Disposition" means the determination of whether abuse/neglect occurred.]

"Facility" [~~is~~ means] the generic term used to describe the setting in [~~all~~] out of family abuse/neglect and for the purposes of this regulation includes schools (public and private), private or state-operated hospitals or institutions, [child] day [~~care~~] centers, state regulated [family] day [~~care~~] homes, [and] residential [~~and group homes~~ facilities] .

"Facility administrator" means the on-site individual responsible for the day-to-day operation of the facility.

"Family day [~~care~~] home," for the purpose of this regulation, means a [~~day care home~~ child day program as defined in the § 63.1-195 of the Code of Virginia] where the care is provided in the provider's home and [~~the home or provider are~~ is] state regulated [(;] locally approved or regulated homes are not included in this definition [ )] .

[~~"Founded" means that a review of the facts shows clear and convincing evidence that child abuse or neglect has occurred.~~

~~"Group home" means a licensed community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 12 residents.~~

~~"Group residence" means a licensed community-based, home-like single dwelling, or its acceptable equivalent, other than the private home of the operator, that is an integral part of the neighborhood and serves up to 13 to 24 residents.~~]

"Identifying information" means name, race, sex, and date of birth of the subject.

[~~"Investigating~~ Local] agency" means the local department of social services responsible for conducting investigations of child abuse/neglect complaints as per § 63.1-248.6 of the Code of Virginia.

"Physical plant" means the physical structure/premises of the facility.

[~~"Reason to suspect" means that a review of the facts shown no clear and convincing evidence that child abuse and neglect has occurred. However, the situation gives worker reason to believe that abuse or neglect has occurred.~~]

"Regulatory [~~licensing/certifying~~] authority" means the department or state board that is responsible under the Code of Virginia for the [~~regulation,~~] licensure [; or] certification [~~or approval~~] of a [~~particular~~] facility for children.

"Residential facility" means a publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their legal guardians, that is subject to licensure [; or] certification [; ~~or regulations~~] pursuant to the provisions of the Code of Virginia and includes, but is not limited to, group homes, group residences, secure custody facilities, self-contained residential facilities, temporary care facilities, and respite care facilities.

[~~"Unfounded" means that a review of the facts shows no reason to believe that abuse or neglect occurred.~~]

PART II.
POLICY.

Article 1.
Out of Family Investigation Policy.

§ 2.1. General.

Complaints of child abuse/neglect involving caretakers in out of family settings are [for the purpose of this regulation] complaints in [~~regulated or unregulated church affiliated~~ state licensed and religiously exempted child] day [~~care~~] centers, regulated family day [~~care~~] homes, private and public schools, group [~~homes,~~] residential [~~treatment centers,~~ facilities,] hospitals [; or] institutions [~~or other child caring facilities~~] . These complaints shall be investigated by qualified staff employed by local departments of social services/welfare.

Staff [~~are~~ shall be] determined to be qualified based on [~~the competencies~~ criteria] identified by the department. All staff involved in investigating a complaint [~~will~~ must] be qualified. [~~Such complaints will be jointly investigated by child protective services and regulatory authority staff as appropriate.~~

~~Local agency staff have the same responsibilities for investigating, determining the facts, reporting to the Central Registry and providing indicated services in complaints in out of family situations as they do in family situations. Many of the policies in investigating family complaints apply to investigations of complaints in out of family situations. The policy to be followed which is specific to out of family complaints is set out in §§ 2.2 through 2.16 of this regulation.~~ In addition to the authorities and the responsibilites specified in department policy for all child protective services investigations, the policy for investigations in out of family settings is se

out in §§ 2.2 through 2.12 of this regulation.]

[*~~§ 2.2. Establish validity of complaint.~~*

~~Prior to initiating an investigation of a report, the local child protective services worker shall establish that what has been reported constitutes a valid complaint of child abuse/neglect.~~

~~A valid complaint shall meet all of the following criteria:~~

~~1. The child or children must be under the age of 18 at the time of the complaint.~~

~~2. The alleged abuser must be a person responsible for the child's care.~~

~~3. The agency receiving the report must be an agency of jurisdiction.~~

~~4. The circumstances described must allege suspected abuse or neglect.~~

§ ~~2.3. Obtain a complaint number.~~

~~The local child protective services worker shall contact the CANIS Hotline and obtain a complaint number.~~]

§ ~~2.4~~ § 2.2.] *Initial assessment.*

If the complaint information received is such that the [*~~worker~~ local agency*] *is concerned for the child's immediate safety, contact must be initiated with the facility administrator immediately to ensure the child's safety. If, in the judgment of the* [*child*] *protective services* [*/CPS*] *worker, the situation is such that the child or children should be* [*immediately*] *removed from the facility, the parent or parents, guardian or agency holding custody shall be notified immediately to mutually develop a plan which addresses the child's or children's immediate safety needs.* [*~~This notification may be made by telephone but shall be followed up in writing. The facility shall be informed immediately of this notification of the parent, guardian or agency holding custody and receive a copy of the written notification.~~*]

[*§ ~~2.5.~~ § 2.3.*] *Involvement of regulatory agencies.*

The authority of [*the*] *local* [*~~child protective services units~~ agency*] *to investigate complaints of alleged child abuse/neglect in regulated facilities overlaps with the authority of the public agencies which have regulatory responsibilities for these* [*~~same~~*] *facilities* [*to investigate alleged violations of standards. ~~It is assumed that the CPS worker would proceed immediately to take steps to assure the child's or children's safety prior to initiating contact with the regulatory authority.~~*]

[*~~1. The CPS worker will determine who the lead licensing or certifying authority is for regulated facilities and will make the appropriate contact.~~*

~~a. For facilities operated or certified by the Department of Social Services, the appropriate licensing unit supervisor shall be contacted.~~

~~b. For facilities operated or certified by the Department of Youth and Family Services (DYFS), the administrator of the youth and family services regional office shall be contacted.~~

~~c. For facilities operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS), the director of the facility shall be contacted. In those facilities which are licensed by DMHMRSAS, the director of the facility and the State Human Rights Director shall be contacted.~~

~~d. For facilities operated or licensed by the Department of Education, the Division of Compliance Coordination in the Department of Education shall be notified.~~

~~e. A number of facilities are regulated by multiple agencies. The Office of the Coordinator, Interdepartmental Regulation, is available to assist in identifying the lead licensure or certification authority.~~]

[*~~2. The CPS worker will~~ 1. For complaints in state regulated facilities and religiously exempted child day centers, the local agency shall contact the regulatory authority and*] *share the complaint information* [*~~with the contact person who~~ . The regulatory authority*] *will* [*~~then~~*] *appoint a staff person to participate in the investigation to determine if there are regulatory concerns.*

[*~~3.~~ 2.*] *The CPS worker* [*assigned to investigate*] *and the* [*appointed*] *regulatory* [*~~worker~~ staff person*] *will discuss their preliminary investigation plan.*

[*~~a. The CPS worker shall do an initial assessment of danger or safety needs of the child or children in order to determine if the child or children are in imminent danger.~~*]

[*~~b~~ a.*] *The CPS worker and the regulatory staff person shall review their respective needs for information and* [*~~determine~~ plan the investigation based on*] *when these needs coincide and can be met with joint interviews or with information sharing.*

[*~~c.~~ b.*] *The investigation plan must keep in focus the policy requirements to be met by each party as well as the impact the investigation will have on the facility's staff, the victim child or children, and the other children at the facility.*

[*§ 2.4. Involvement of other parties.*

A. In a facility for which there is not a state regulatory authority, such as in schools, the CPS worker may ask the facility administrator or school superintendent to designate a staff person to participate in the investigative process.

B. When CPS and law enforcement will be conducting a joint investigation, the CPS worker shall attempt to facilitate a coordinated approach among CPS, law enforcement and the regulatory authority or facility designee.]

[*§ ~~2.6.~~ § 2.5.*] *Contact with CPS regional coordinator.*

[*A. ~~In all out of family complaints,~~ The local agency shall contact*] *the* [*~~Department of Social Services~~ department's*] *regional CPS coordinator* [*~~shall be contacted~~*] *as soon as is practical after the receipt of the complaint. The* [*regional*] *coordinator will review the procedures to be used in investigating the complaint and provide any case planning assistance the local worker may need.*

[*B.*] *The* [*~~state's~~*] *regional coordinator* [*~~is~~ shall be*] *responsible for monitoring the investigative process* [*~~of all out of family complaints~~*] *and shall be kept informed of developments which substantially change the original case plan.*

[*C. At the conclusion of the investigation the local agency shall contact the department's regional CPS coordinator to review the case prior to notifying anyone of the disposition. The regional coordinator shall review the facts gathered and policy requirements for determining whether or not abuse/neglect occurred. However, the statutory authority for the disposition rests with the local agency. This review should not interfere with the requirement to complete the investigation in the legislatively mandated time frame.*]

[*§ ~~2.7~~ § 2.6. ~~Initial~~*] *Contact with the facility administrator.*

A. [*~~In regulated or unregulated facilities,~~*] *The CPS worker shall initiate contact with the facility administrator at the onset of the investigation.* [*~~This may be done by phone, prior to the initial on-site visit, or, when circumstances warrant, may be done during the initial on-site visit.~~*]

B. The CPS worker shall inform the facility administrator or his designee of the details of the complaint. If the administrator or designee is the alleged abuser/neglector, [*this*] *contact should be initiated with the individual's* [*~~supervisor~~ superior*] *, which may be the board of directors, etc.* [*~~This informing shall be documented in the case record.~~ If there is no superior, the CPS worker may use discretion in sharing information with the administrator.*]

C. Arrangements are to be made for:

1. [*Necessary*] *interviews* [*~~with identified collateral staff and other collaterals~~*];

[*~~2. Interview with the victim child or children;~~*]

[*~~3. Interview with the alleged abuser/neglector;~~*]

[*~~4.~~ 2. ~~Observations of the~~ Observations including*] *the physical plant;* [*and*]

[*~~5.~~ 3. Access to information, including*] *review of pertinent policies and procedures* [*; ~~and~~ .*]

[*~~6. Access to necessary collateral information.~~*]

D. The CPS worker [*~~and regulatory staff person~~*] *shall keep the facility administrator apprised of the progress of the investigation.* [*In a joint investigation with a regulatory staff person, either party may fulfill this requirement.*]

[*§ ~~2.8.~~ § 2.7.*] *Contact with the* [*alleged*] *victim child* [*~~and parent or guardian~~*] .

The CPS worker shall interview the alleged victim child [*~~in all complaints. If this is not possible it must be documented in the record why it was not possible. The interview may take place alone or in the presence of the child's parent or guardian. If the interview does not take place in the presence of the child's parents or guardians, they must be notified immediately that a complaint has been received and that an interview has taken place. The facility administrator or other supportive staff may be present for this interview if it appears this is in the best interest of the child. The alleged abuser/neglector shall not be present for this interview.~~ and shall determine who may be present in the interview.*]

[*§ ~~2.9.~~ § 2.8.*] *Contact with the alleged abuser/neglector.*

[*A.*] *The CPS worker shall interview the alleged abuser/neglector* [*~~in all complaints. The CPS worker shall inform the alleged abuser/neglector of the complaint information including~~ . At the onset of the initial interview with the alleged abuser/neglector, the CPS worker shall notify him in writing of the general nature of the complaint and*] *the identity of the alleged victim child* [*~~or children. This informing is to be done in writing. Notification should be given during the initial contact so as~~*] *to avoid any confusion regarding the purpose of the contacts.* [*~~A copy of the notification should be retained for the record. The informing brochure, #032-01-974 (7/92), may be used to make this notification provided that the general nature of the complaint and the identity of the victim child or children is noted on the brochure and the date it was given is documented.~~*]

[*B.*] *The alleged abuser/neglector has the right to involve a representative of his choice to be present durin*

[~~the interview~~ his interviews] . [~~He also has the right to tape record his own interview but shall inform the interviewers of this taping. If the alleged abuser/neglector refuses to be interviewed, this refusal must be documented in the record.~~]

[~~§ 2.10.~~ § 2.9.] Contact with collateral children.

The CPS worker shall interview [~~the~~] nonvictim [~~child or~~] children as collaterals if it is determined that they may have information which would help in determining the finding in the complaint. Such contact should be made with prior consent of the child's [~~or children's~~] parent [~~or ,~~] guardian [or agency holding custody] . If the situation warrants contact with the child prior to such consent being obtained, the parent [~~or ,~~] guardian [or agency holding custody] should be informed as soon as possible [~~; but no later than two working days,~~] after the interview takes place.

[~~§ 2.11. Determine whether or not abuse/neglect occurred.~~

~~After collecting and assessing the facts, the child protective services worker shall make a disposition as to whether or not abuse/neglect has occurred. The disposition shall be made within 45 days of the receipt of the complaint.~~

~~1. The CPS worker shall contact the Department of Social Services regional CPS coordinator to review the case prior to notifying anyone of the disposition. This case review should involve the investigating worker's supervisor and can be accomplished via phone contact. The coordinator will review the facts gathered and policy requirements for investigating complaints. This review is required in all out of family complaints, but should not interfere with the legal requirement to complete the investigation and make a determination within 45 days.~~

~~2. When it is determined that the policies or procedures of the facility or the manner in which they were followed contributed to or caused the abusive/neglectful situation, the facility itself may be designated as involved in the incident. Consultation with the regional CPS coordinator must take place prior to making this designation. The rationale for this designation is to be clearly documented in the investigation record. Notification of this designation shall be made in writing to the facility administrator. A representative for the facility will be afforded the right to appeal this designation on behalf of the facility. Such right to appeal shall be provided to the facility administrator in writing.~~]

[~~§ 2.12. Risk assessment.~~

~~The focus of the risk assessment in these investigations is on the needs of the child.~~]

[~~§ 2.13. Documentation.~~

~~All complaints investigated shall be documented.~~]

[~~§ 2.14.~~ § 2.10.] Report the findings.

[~~A. Upon determining the findings of a complaint, the worker shall report the findings to:~~

~~1. Child Abuse and Neglect Information System (CANIS).~~

~~a. The alleged abuser/neglector's name shall be entered under the heading "Involved Caretaker" on the CANIS form. The school or facility name shall be entered as the institution name and the address of the school or facility should be listed on the form.~~

~~b. The parents' names shall be entered for each victim child under P1 on the form.~~

~~2. Complainant.~~

~~a. In founded and reason to suspect complaints, the complainant, when known, shall be informed that his complaint has been investigated and necessary action taken. This shall be done in writing and shall be documented in the record.~~

~~b. In unfounded complaints, the complainant, when known, shall be informed that his complaint was investigated and determined to be unfounded. This shall be done in writing and shall be documented in the record.~~

~~3. Persons named in the central registry.~~

~~a. In founded cases, any persons named in the report whose role was either the abuser or the victim shall be informed that their names are in the CANIS central registry, and will remain there for:~~

~~(1) Eighteen years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 1.~~

~~(2) Seven years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 2.~~

~~(3) Three years past the date of the complaint for all complaints determined by the investigating agency to be founded, Level 3.~~

~~b. In reason to suspect cases, any persons named in the report whose role was either the abuser or the victim shall be informed that their names are in the CANIS central registry, and will remain there for one year past the date of the complaint unless another complaint is received and substantiated.~~

~~c. The worker should use professional judgment in~~

~~determining when to directly notify a child victim versus when to notify the child's parent or parents. In most cases, the parent or parents holding custody of the child should be the one or ones to receive the information.~~

~~d. In all cases where the disposition is founded or reason to suspect, including the facility in instances where the facility's role is that of involved, the abuser/neglector shall be informed of his right to appeal. This shall be done both verbally and in writing as soon as the disposition is reached.~~

~~The written informing shall be in the form of a letter and a copy shall be included in the case record. The letter shall include:~~

~~(1) A clear statement that he is the abuser/neglector;~~

~~(2) The type of abuse/neglect;~~

~~(3) The disposition, level and retention time;~~

~~(4) The name of the victim child or children; and~~

~~(5) A statement informing the client of his right to appeal.~~

~~The verbal informing should serve to explain to the client what the disposition means and how long information about the complaint will be maintained in the CANIS central registry. The worker must document in the case record the date the verbal informing took place. A copy of the brochure, "Child Protective Services Client Appeals and Fair Hearings" (#032-01-006 9/92) is to be given or sent to all abusers/neglectors in founded and reason to suspect complaints.~~

~~e. Individuals have a right to request to see information about themselves which is contained in the record.~~

~~B. Other notifications in unfounded complaints shall be made as follows:~~

~~1. The alleged abuser shall be informed that the complaint against him was determined to be unfounded. This shall be done in writing. The notification shall be documented in the record.~~

~~2. In all unfounded complaints, the worker shall inform the alleged abuser that he has the right to petition the court to obtain the identity of the complainant if he believes the complaint was made in bad faith or maliciously. This informing may best be accomplished by providing the alleged abuser with a copy of § 63.1-248.5:1 of the Code of Virginia and referring him to an attorney or the court if he has questions.~~

~~C. In all out of family investigations, the following persons must also receive written notification of the findings at the same time the alleged abuser/neglector is notified. Notification shall be documented in the record:~~

~~1. The parent or guardian of the victim child or children;~~

~~2. The facility administrator;~~

~~3. The regulatory agency administrator (for regulated facilities); and~~

~~4. The regulatory staff person involved in the investigations.~~

If the facility administrator is the abuser/neglector, written notification of the findings shall be submitted to his superior if appplicable.]

[~~§ 2.15. Case management.~~

~~A. Case records shall be set up in the name of the family of the alleged abused/neglected child or children.~~

~~If ongoing services are to be provided to the abuser/neglector, a separate case record can be established in the name of that person.~~

~~B. Any follow-up regarding out of family abusers/neglectors is the responsibility of the employing facility.~~

[~~§ 2.16.~~ § 2.11.] *Monitoring of cases for compliance.*

A [~~random~~] *sample of cases will be reviewed* [~~annually~~] *by department* [~~of~~ ~~Social~~ ~~Services~~] *staff to ensure compliance with policies and procedures.*

Article 2.
[~~Investigating Child Abuse or Neglect In Out Of Family Complaints~~ Local Staff Qualifications In Out of Family Investigations] .

[~~§ 2.17.~~ § 2.12. ~~Training~~] *Requirements.*

[~~A. The Department of Social Services, in cooperation with the Out of Family Investigations Task Force, has developed specific competencies to be addressed in a course (Out of Family Investigations). These competencies are part of several required for consideration by local agency staff who are to be deemed qualified to conduct these types of investigations.~~

~~In addition, it has been determined that each worker will be assessed with competency in the core and specialized courses from VISSTA* listed below before being qualified to conduct out of family investigations.~~

~~Principles of Human Services~~
~~Casework Process and Planning in Human Services~~

~~*The Effects of Child Abuse and Neglect on Child and Adolescent Development*~~
~~*Separation and Loss Issues in Human Service Practice*~~
~~*Family Empowerment*~~
~~*Developing and Growing a Team*~~
~~*Sexual Abuse*~~
~~*Intake and Investigation of Child Abuse and Neglect*~~

~~* VISSTA, The Virginia Institute for Social Service Training Activities, is comprised of a series of contracts between the Virginia Commonwealth University School of Social Work, four local departments of social services and the Virginia Department of Social Services.~~

~~*B. Local agency human service staff, are invited to VISSTA courses based on their need for training as demonstrated on the Individual Training Needs Assessment.*~~

~~*C. Each local agency staff person shall also attend the department's Out of Family Investigation Procedures policy training before being considered qualified.*~~]

[*A. In order to be determined qualified to conduct investigations in out of family settings, local CPS staff shall meet minimum education standards established by the department including:*

1. Documented competency in designated general knowledge and skills and specified out of family knowledge and skills, and

2. Completion of out of family policy training.

B. The department and each local agency shall maintain a roster of personnel determined qualified to conduct these out of family investigations.]

VA.R. Doc. No. R94-251; Filed November 10, 1993, 11:53 a.m.

..... AT RICHMOND, NOVEMBER 24, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

.....CASE NO. PUC930013

Ex Parte: In the matter of
adopting rules implementing the Pay
Telephone Registration Act

FINAL ORDER

During its 1993 session, the General Assembly of Virginia enacted Title 56, Chapter 16.3 of the Virginia Code, entitled the Pay Telephone Registration Act ("the Act"). The legislature enacted Va. Code §§ 56-508.15 and -508.16 in response to a growing number of complaints by the public involving coin telephones. Va. Code § 56- 508.15 requires the registration or certification of all persons engaged in the sale or resale of intrastate telephone service through pay telephone instruments. Va. Code § 56-508.16, among other things, authorizes the State Corporation Commission ("Commission") to promulgate rules necessary to implement the provisions of the Act.

Consistent with the directives set out in the Act, on May 11, 1993, the Commission issued an Order docketing the rulemaking and directing the Division of Communications to publish notice of certain proposed rules governing the registration of pay telephone service and instruments. Further, the Order invited interested persons to file comments or requests for hearing on the proposed rules on or before June 17, 1993.

On June 18, 1993, in response to a Motion filed by Virginia Cellular Limited Partnership, trading as Contel Cellular ("Contel Cellular"), the Commission extended the time in which all interested parties could file comments to June 25, 1993.

The Commission received numerous written comments on the proposed rules. In addition to these comments, Capital Network System, Inc. ("Capital"); and Eastern Telecom Corporation, Atlantic Telco Corporation, and Public Access, Inc. (hereafter collectively referred to as the "Pay Telephone Providers") requested a hearing so that they could orally present their objections to the rules. AT&T Communications of Virginia, Inc. ("AT&T") and the Virginia Telephone Association ("VTA") requested leave to be heard if a hearing was convened.

After considering the comments, on July 7, 1993, the Commission issued an Order directing its Staff to file a report analyzing the filed comments and proposing revisions to the proposed rules where appropriate. The same Order assigned a Hearing Examiner to the matter, invited further comments on the Staff's Report, and set the matter for oral argument before the Examiner.

On July 26, 1993, the Hearing Examiner extended the filing date for the Staff's Report to August 4, 1993. In the same Ruling, the Hearing Examiner extended the date to August 27, 1993, in which parties could file further comments responsive to the Staff Report.

On August 2, 1993, the Staff filed its Report. In its Report, the Staff recommended various changes to the proposed rules to respond to the issues raised in the comments. Staff further recommended that there be no changes to proposed Rules 2, 3, 7, 10, and 17 and proposed to eliminate proposed Rule 14. Rule 14 provided:

> [n]o pay telephone service provider may enter into any contract or agreement with any provider of operator service who charges users of pay telephone instruments any rate which conflicts with Rules 12 or 13 above.

The Staff proposed to eliminate this rule because it believed Rules 12 and 13, which address the charges to the public from private telephone instruments, were sufficient rate criteria for pay telephone instruments. Staff noted that by eliminating Rule 14, it intended to hold pay telephone providers solely responsible for compliance with all of the proposed rules, including Rules 12 and 13. The Staff proposed to renumber the remaining rules sequentially.

In response to the Staff's Report, further comments were filed by Capital; The Chesapeake and Potomac Telephone Company of Virginia ("C&P"); the Pay Telephone Providers; International Telecharge, Inc. ("ITI") and American Network Exchange, Inc. ("ANE"); and Robert Cefail Associates American Inmate Communications, Inc. ("RC&A").

In his August 19, 1993 Ruling, the Hearing Examiner set the matter for argument on September 7, 1993. On September 1, 1993, the Examiner granted the Motions to Intervene filed by RC&A and Cleartel Communications, Inc..

On the appointed day the matter came for argument before Howard P. Anderson, Jr., Hearing Examiner, Counsel appearing were: Patrick Wiggins, Esquire, counsel for Capital; Warner F. Brundage, Jr., Esquire, Counsel for C&P; Allan R. Staley, Counsel for the Pay ANE; Richard D. Gary, Esquire, Counsel for the Virginia Telephone Association ("VTA"); GTE Virginia, GTE South and GTE Mobile Communications ("GTE"); Dana Frix for RC&A; and Karlyn D. Stanley, Esquire, Counsel for AT&T Communications of Virginia; and Sherry H. Bridewell, Counsel for the Commission Staff. Jean Ann Fox appeared as a public witness. At the conclusion of the proceeding, the Examiner took the matter under advisement.

On November 4, 1993, the Hearing Examiner issued his Report in the captioned matter. In his Report, the

Examiner accepted Staff's proposals for Rules 1-5, 7, 9, 10 and 16-23. Further, he recommended that Rule 6 be amended to broaden the acceptable language to advise why pay telephone instruments cannot receive incoming calls. Specifically, the Hearing Examiner proposed the following language for Rule 6:

> Pay telephone instruments must be equipped to receive incoming calls unless they are prominently marked with either the words "OUTGOING CALLS ONLY", "NO INCOMING CALLS", or other language deemed acceptable by the Commission which will reasonably advise the user that no incoming service is available.

The Examiner also revised Point 8 of Rule 15 which prescribes certain information to be found on pay telephone instruction cards to reflect the change made in Rule 6.

Additionally, the Examiner accepted Staff's proposed change to Rule 8 made during oral argument to address the fact that C&P uses message rate, measured rate and flat rate options for access lines offered to privately owned pay telephones.

He further proposed to amend Rule 11 to reflect changes suggested by the Pay Telephone Providers to permit routing of operator calls to local exchange company ("LEC") operators when the operator service whom the pay telephone provider uses does not provide prompt, efficient and accurate emergency service to a consumer when requested.

The Examiner also agreed that it was appropriate to eliminate Rule 14 and renumber the remaining rules as proposed by the Staff's Report. Moreover, he urged the Commission to amend proposed Rules 12 and 13 to permit private pay telephone providers to initiate proceedings before the Commission to prove that their costs could not be reasonably met under the rate caps contained within those rules. Finally, he recommended that pay telephone instruments provided by confinement service providers be exempted from the application of the proposed rules, with the exception of the registration requirement found in Rule 3. He urged the Commission to adopt the proposed rules, as revised, in his Report and invited the parties to file comments in response to his Report within fifteen (15) days from the date of its issuance.

Only C&P filed comments. C&P asked the Commission to consider its comments filed earlier with regard to Rules 7, 9, 11, 13 and 16 (renumbered as 15), and additionally commented about pay telephones provided to correctional facilities. Among other things, C&P objected to the information provided to LECs by private pay telephone service providers, charges for directory assistance, routing of operator calls, and the surcharge for LEC calls.

NOW, upon consideration of the record herein, the Hearing Examiner's Report, the comments thereto, and the applicable statutes, the Commission is of the opinion and finds that the recommendations of the Hearing Examiner are reasonable, as further modified and clarified herein, and that the rules appearing as Appendix A hereto should be adopted, effective forthwith. We will briefly address the provision of LEC services as private pay telephone providers outside of their certificated service territories, clarify the Rules' application to pay telephone instruments found in confinement institutions, eliminate the requirement that private pay telephone providers furnish their FCC registration number to LECs, and generally address certain other issues raised in this proceeding.

We believe that LECs and other carriers may offer pay telephone service outside of their certificated service territories. This will put these service providers on a more equitable basis with other pay telephone providers. However, these certificated companies must register as private pay telephone providers for services provided outside of their certificated territory and, for these services, will be subject to the same rules as are other private pay telephone service providers for this kind of service. The attached rules will accordingly be amended to reflect this change.

With respect to the issue of pay telephone instruments provided to correctional institutions, we note that the Hearing Examiner has recommended that confinement service providers should be subject to Rule 3, requiring registration, but should be otherwise exempted from the pay telephone rules. We do not agree, and accordingly will amend Rule 1 to exempt confinement service providers as well as certificated companies from the pay telephone rules for restricted access telephone instruments provided to confinement facilities.

Further, the literal language of the rules recommended by the Examiner would appear to apply to LECs who supply pay phone service to correctional facilities. This is not appropriate. Consequently, we find that restricted access instruments furnished by LECs to confinement facilities which are the functional equivalent of the instruments provided by confinement service providers should also be excluded from the application of these rules.

Based upon the record in this case, instruments of this nature should not be subject to the rules at this time. However, we will retain the authority to revisit this conclusion should subsequent circumstances, i.e., customer complaints, dictate a contrary result. Accordingly, we find that Rule 1 should be revised as follows:

> (1) Local exchange telephone companies, interexchange carriers, and cellular carriers are authorized to provide pay telephone service within their certificated areas in the Commonwealth of Virginia. Private pay telephone service providers, including local exchange companies, interexchange carriers and cellular carriers wishing to provide pay telephone service as providers outside of their

certificated service territories, are authorized, when they have been properly registered with the State Corporation Commission (SCC), to provide pay telephone service anywhere within the Commonwealth of Virginia. The rules contained herein apply to local exchange telephone companies, interexchange carriers, and private pay telephone service providers. Restricted access pay telephone instruments provided to confinement facilities are excluded from the application of these rules. Cellular carriers must conform to Rules 3 and 13, but are otherwise excluded from the application of these rules. Should circumstances such as, for example, consumer complaints make it necessary, the Commission may in its own discretion amend these rules for further application to cellular pay telephone providers and to restricted access instruments provided to confinement facilities.

In addition, we agree with C&P that Rule 7 should be amended to remove the requirement that private pay telephone providers provide their FCC registration numbers to LECs. It appears that the Federal Communications Commission ("FCC") no longer requires LECs to obtain this information and that LECs have no real use for this information.

However, we will require the private pay telephone provider to continue to provide information concerning its connections, location, SCC registration number, as well as any details a LEC may need for billing purposes. Information as to location and connection are obviously useful to the LEC for billing purposes. Information about the SCC registration number provides assurance to the LEC that the pay telephone provider is lawfully entitled to receive service from the LEC. In this regard, we acknowledge that the Commission is ultimately responsible for enforcement of the Pay Telephone Registration Act. Moreover, the Act expressly provides for disconnection of the registrant's pay telephone instrument by the certificated carrier upon suspension or revocation of a private provider's registration. Thus, the Act has made all certificated carriers, including LECs, an inextricable part of the enforcement process. Rule 7's requirement that providers of private pay telephones furnish their SCC registration numbers to a LEC places the onus of the Rule on the instrument provider and only tangentially involves the LEC. We find this Rule, as amended herein, to be consistent with the role of certificated carriers under that Act.

Further, we will make several technical corrections to the Examiner's recommended Rule 8 to recognize that flat rate service for access lines is not available in all exchanges and that some LECs offer both optional message rate and measured rate service while others do not. Consequently, Rule 8 should be revised to read as follows:

Where business flat rate service is available, local exchange companies will furnish access lines to privately owned pay telephones at a flat rate not to exceed the private branch exchange trunk flat rate. Where available, local exchange companies will offer optional message rate and/or measured rate business service access lines to privately owned pay telephone providers.

Finally, we believe the Rules as otherwise recommended by the Hearing Examiner should remain unchanged. We note, with respect to C&P's objections relating to directory assistance charges, that C&P and other LECs provide directory assistance service under tariffs approved by the Commission. Private pay telephone providers do not provide any services under tariff. If C&P or other LECs desire to change their tariffed directory assistance charges, nothing in these rules prevents them from doing so, subject to appropriate application to and approval by the Commission.

Accordingly, IT IS ORDERED:

(1) That the revised rules set forth in Appendix A are hereby adopted effective forthwith;

(2) That a copy of these rules, together with the Order adopting them, shall be published in the Virginia Register; and

(3) That there being nothing further to be done herein, the same is hereby dismissed from the Commission's docket of active proceedings.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all Virginia local exchange companies as set out in Appendix B hereto; Virginia's certificated interexchange carriers as set out in Appendix C attached hereto; all cellular carriers regulated by the Commission as set out in Appendix D attached hereto; Allan R. Staley, Esquire, P.O. Box 12180, Newport News, Virginia 23612-2180; Kathleen Villacorta, Esquire, Wiggins & Villacorta, P.A., P.O. Drawer 1657, Tallahassee, Florida 32302; Brad E. Mutschelknaus, Esquire and Rachel Rothstein, Esquire, Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006; Richard D. Gary, Esquire, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; William S. Edwards, 5000 Cox Road, Suite 120, Glen Allen, Virginia 23060; Karlyn D. Stanley, Esquire, 3033 Chainbridge Road, Room 3D, Oakton, Virginia 22185-0001; James B. Wright, 112 Sixth Street, Bristol, Tennessee 37620; A.E. Hantwerker, P.O. Box 1163, Richmond, Virginia 23209; Lesla Lehtonen, Esquire, 1850 M Street, N.W., Suite 1110, Washington, D.C. 20036; Stephen D. Sinclair, 12000 Government Center Parkway, Suite 433, 4th Floor, Fairfax, Virginia 22035-0045; Joe W. Foster, Esquire, P. O. Box 110, MC 7, Tampa, Florida 33601; Warner F. Brundage, Jr., P.O. Box 27241, Richmond, Virginia 23261; Kenneth F. Melley, Jr., 9311 San Pedro, Suite 300, San Antonio, Texas 78216; Tim Linger, P.O. Box 2261, Winchester, Virginia 22604; Thomas J. Christoffel, 607 Midland Avenue, Front Royal, Virginia 22630; Pamela Barefoot, P.O. Box 180, 108 Market Street, Onancock,

Virginia 33417; Paul and Geneva Irby, Route 1, Box 203, Gladys, Virginia 24554; Darlene Isom, Route 4, Box 223, Martinsville, Virginia 24112; Bettie M. Cooper, 7339 Barberry Lane, North Short Point, Norfolk, Virginia 23505-3001; Bettie Jo Scarpa, 833 Lipton Drive, Newport News, Virginia 23602; James Scheiman, 338 Ambler Court, Hampton, Virginia 23669-1719; Patricia Hailey, HCR Box 37, Red House, Virginia 23963; and Charles R. Lingafelt, P.O. Box 367, Gretna, Virginia 24557; Jean L. Kiddoo, Esquire, Dana Frix, Esquire and Ky Booth Kirby, Esquire, Swidler & Berlin, 3000 K Street N.W., Suite 300, Washington, D.C. 20007-5116; Jean Ann Fox, 114 Coachman Drive, Yorktown, Virginia 23693; Lowell Chaney, President, Virginia Telecom Corporation, P.O. Box 787, Chester, Virginia 23831; and the Commission's Office of General Counsel and Divisions of Communications, Public Service Taxation, and Public Utility Accounting.

..... APPENDIX A

RULES FOR PAY TELEPHONE SERVICE AND INSTRUMENTS

THE FOLLOWING RULES SHALL APPLY TO ALL PAY TELEPHONE INSTRUMENTS INSTALLED OR MADE AVAILABLE FOR PUBLIC USE WITHIN THE COMMONWEALTH OF VIRGINIA, WHETHER OWNED AND OPERATED BY A LOCAL EXCHANGE COMPANY, AN INTEREXCHANGE CARRIER, A CELLULAR CARRIER, OR A PRIVATELY OWNED PAY TELEPHONE SERVICE PROVIDER.

1. Local exchange telephone companies, interexchange carriers, and cellular carriers are authorized to provide pay telephone service within their certificated areas in the Commonwealth of Virginia. Private pay telephone service providers, including local exchange companies, interexchange carriers and cellular carriers wishing to provide pay telephone service as providers outside of their certificated service territories, are authorized, when they have been properly registered with the State Corporation Commission (SCC), to provide pay telephone service anywhere within the Commonwealth of Virginia. The rules contained herein apply to local exchange telephone companies, interexchange carriers, and private pay telephone service providers. Restricted access pay telephone instruments provided to confinement facilities are excluded from the application of these rules. Cellular carriers must conform to Rules 3 and 13, but are otherwise excluded from the application of these rules. Should circumstances such as, for example, consumer complaints make it necessary, the Commission may in its own discretion amend these rules for further application to cellular pay telephone providers and to restricted access instruments provided to confinement facilities.

2. Reliable connections to the telecommunications network and high quality service to end users is expected of all pay telephone providers.

3. Any SCC certificated local exchange company, interexchange carrier, or cellular carrier who is a provider of pay telephone service must submit a notarized letter to the SCC by not later than January 1, 1994, which attests to that fact. If any SCC certificated local exchange, interexchange, or cellular carrier is not a pay telephone service provider as of January 1, 1994 and, subsequent to that date, plans to become a provider of that service, they must first submit a notarized letter to the SCC attesting to its intent. The letters as described in this rule should be addressed to the Division of Communications, P.O. Box 1197, Richmond, Virginia 23209.

4. The State Corporation Commission assesses a nonrefundable registration fee each year for each private pay telephone operated in Virginia, including those telephones operated by local exchange companies, interexchange carriers and cellular carriers providing pay telephone service outside of their certificated service areas. The fee is $10.00 per year per private pay telephone operated for one or two (1 or 2) pay telephones, and $8.00 per private pay telephone operated for three (3) or more pay telephones. The provider must submit this fee with the completed Commission form in order to become registered. In the first year of the Pay Telephone Registration Act this fee will be due by not later than January 1, 1994, and will be assessed and payable to the Commission by January 1st of each successive year. A late filing fee of ten percent (10%) or $25.00, whichever is greater, will be assessed for all first year applications received after January 1, 1994, and for late payments received after January 1st in successive years. After the Commission processes a form and completes the registration process no refunds on fees received will be allowed. Commission forms may be obtained by writing to the Division of Communications, P.O. Box 1197, Richmond, Virginia 23209 or by calling the Division of Communications at (804) 371-9420.

5. Private pay telephone service may be provided only through telephone instruments registered by the Federal Communications Commission (FCC).

6. Pay telephone instruments must be equipped to receive incoming calls unless they are prominently marked with either the words "OUTGOING CALLS ONLY", "NO INCOMING CALLS" or other language deemed acceptable by the Commission which will reasonably advise the user that no incoming service is available.

7. All providers of privately owned pay telephone service must notify the area local exchange carrier of a pay telephone instrument's connection, location, pay telephone provider's SCC registration number, and such other details as the local exchange company may need for billing purposes. Failure to provide accurate information could result in the instrument not being connected or being disconnected.

8. Where business flat rate service is available, local exchange companies will furnish access lines to privately owned pay telephones at a flat rate not to exceed the

private branch exchange trunk flat rate. Where available, local exchange companies will offer optional message rate and/or measured rate business service access lines to privately owned pay telephone providers.

9. All pay telephone service providers must furnish local directory number information on their pay telephone instruments. End users of private pay telephones may be charged by the private pay telephone providers for local directory assistance service. The maximum local directory assistance charge from a private pay telephone shall be determined by rounding the local exchange company charge up to the nearest multiple of $.05. Any long distance directory assistance charge applied to the pay telephone service provider by certificated carriers may be passed on to the pay telephone instrument user.

10. All pay telephone instruments must be equipped for dial tone first.

11. All pay telephone instruments must provide calling without a charge to 911 where that number is utilized by emergency agencies. All pay telephone instruments must allow consumers to reach an operator without charge by dialing "Operator ("0")". The operator whom the consumer reaches must provide prompt, efficient, and accurate emergency service to a consumer when requested. The Commission may require a pay telephone provider to route "Operator ("0")" calls to the LEC Operator serving the area in which the instruments of the pay telephone provider are located if the operator service whom the pay telephone provider uses does not provide prompt, efficient and accurate emergency service to a consumer when requested.

12. The maximum rate for local calls or extended area calls originating from all pay telephone instruments, whether the call is completed coin paid, billed collect, billed to a credit card, or billed to a third number, may not exceed the rate approved for the area local exchange company including any operator assistance charges. However, a private pay telephone provider may initiate a proceeding before the Commission to prove that its costs cannot reasonably be met under the rate caps contained herein.

13. The charge for all intrastate toll calls placed from local exchange company, inter-exchange carrier, or cellular carrier owned pay telephone instruments shall be as specified in the tariffs on file with the Commission. The maximum charge for all intrastate, intraLATA toll calls placed from all privately owned pay telephone instruments may not exceed the approved charge for similarly rated calls, including any operator assistance charges, as specified in the area local exchange company tariff, plus a surcharge of $1.00. The maximum charge for all intrastate, interLATA toll calls placed from privately owned pay telephone instruments may not exceed the charge for similarly rated calls as specified in the tariffs of AT&T, plus a surcharge of $1.00. However, a private pay telephone provider may initiate a proceeding before the Commission to prove that its costs cannot reasonably be met under the rate caps contained herein.

14. All pay telephone service providers must post consumer information and instructions on their pay telephone instruments as specified in the attachment to these rules.

15. In providing intrastate toll service, all pay telephone service providers must allow dialed user access without charge from their pay telephone instruments to all operator service providers' networks through their "950", "800", or "1-0-XXX-0+" numbers. Dialed user access without charge must also be allowed to the local exchange operator. In those cases where the access code "0" is reserved for carriers other than the local exchange company operator, access to the local exchange operator must be provided through the access code "*0".

16. All coin operated pay telephone instruments must accept any combination of nickels, dimes, and quarters for local and long distance calling charges. All coin operated pay telephone instruments must return any deposited amount if the call is not completed.

17. All pay telephone service providers must assure that a process exists for making prompt refunds to customers.

18. All pay telephone service providers must make all reasonable efforts to minimize the extent and duration of service interruptions. Ninety percent to one hundred percent (90 - 100%) of all pay telephone instruments which are reported as being out of service, when the trouble condition does not require construction work, must be restored to service within twenty-four (24) hours of the report receipt. The 24-hour clearance standard excludes trouble reports received on Sundays, legal holidays, and during emergency operating conditions. Out of service reports which require construction must be cleared within five business days of report receipt.

19. Local exchange companies must furnish private pay telephone service providers who operate within their certificated areas a listing of all central office codes working in their area. In addition, the local exchange companies must also provide information to private pay telephone service providers on local and extended calling areas. This information must be updated by the local exchange companies and reissued to the private pay telephone service providers as central office codes are added or deleted and as changes occur in local calling and extended calling areas. If local exchange companies wish to charge private pay telephone providers for furnishing the above described information they should submit tariffs for Commission approval which describe their proposal.

20. All pay telephone instruments must conform to the requirements and the timetables which are prescribed in the Americans with Disabilities Act.

21. Failure to comply with the rules contained herein may result in appropriate action by the State Corporation Commission to include disconnection of pay telephone instruments, fines, loss of registration for private pay telephone providers, loss of authority to engage in the pay telephone business for certificated carriers, or any combination of these penalties which, in the judgment of the Commission, is necessary to protect the public interest. The sanctions set out in this rule are in addition to any remedies that may be available through the Virginia Public Telephone Information Act.

22. If it finds that the action is consistent with the public interest, the Commission may exempt a pay telephone provider from some or all of the rules contained herein.

ATTACHMENT TO COMMISSION RULES FOR PAY TELEPHONE SERVICE AND INSTRUMENTS

Rule No. 14 requires that all pay telephone service providers must post consumer information and instructions on their pay telephone instruments as specified in this attachment. Pay telephone instruction cards must contain, at a minimum, the following information:

1. Clear operating instructions.

2. Physical address and phone number of the pay telephone instrument.

3. Ownership of the instrument, including the owner's name, address, and contact telephone number.

4. Procedures for repair, refunds, and billing disputes, including specific contact telephone numbers for 24-hour contact service.

5. Instructions on how to contact both local and long distance directory assistance.

6. Prominent instructions specifying how to reach the local exchange operator.

7. Clear and prominent instructions on how pay telephone users may reach emergency agencies. These instructions shall refer to "911" where that code is in use as a locality's emergency agency contact number. Where "911" is not in use, the instructions must specify that the desired emergency agency's telephone number be called or dial "0" for emergency assistance.

8. If the pay telephone instrument is not equipped to receive incoming calls, prominent instructions which read "OUTGOING CALLS ONLY", "NO INCOMING CALLS", or other language deemed acceptable by the Commission which will reasonably advise the user that no incoming service is available must be posted.

9. Instructions on how to reach a pay telephone instrument user's preferred long distance or interexchange carrier.

10. The identity of the company normally making the charge for any intrastate long distance or local operator assisted call not handled by the local exchange company operator.

11. A conspicuous notice stating "For long distance rates, dial.....". The listed number shall be toll free to the pay telephone instrument user and shall connect the user to the company normally making the charge for any intrastate long distance or local operator assisted call originating from the pay telephone instrument. The party to whom the pay telephone instrument user is connected shall be able to quote a specific rate for each call upon inquiry.

12. Any and all other notices or information required by the Virginia Public Telephone Information Act (VPTIA).

.....Appendix B

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation
Mr. Raymond L. Eckels, Manager
P. O. Box 76
Amelia, Virginia 23002

Buggs Island Telephone Cooperative
Mr. M. Dale Tetterton, Jr., Manager
P. O. Box 129
Bracey, Virginia 23919

Burke's Garden Telephone Exchange
Ms. Sue B. Moss, President
P. O. Box 428
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia
Mr. Martin H. Bocock
Vice President and General Manager
P. O. Box 6788
Charlottesville, Virginia 22906

Chesapeake & Potomac Telephone Company
Mr. Hugh R. Stallard, President
and Chief Executive Officer
600 East Main Street
P.O. Box 27241
Richmond, Virginia 23261

Citizens Telephone Cooperative

Mr. James R. Newell, Manager
Oxford Street
P. O. Box 137
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Contel of Virginia, Inc.
Mr. Edward J. Weise, President
9380 Walnut Grove Road
P. O. Box 900
Mechanicsville, Virginia 23111-0900

GTE South
Mr. Thomas R. Parker
Associate General Counsel
Law Department
P.O. Box 110 - Mail Code: 7
Tampa, Florida 33601-0110

Highland Telephone Cooperative
Mr. Elmer E. Halterman, General Manager
P.O. Box 340
Monterey, Virginia 24465

Mountain Grove-Williamsville
Telephone Company
Mr. L. Ronald Smith
President/General Manager
P. O. Box 105
Williamsville, Virginia 24487

New Castle Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

New Hope Telephone Company
Mr. K. L. Chapman, Jr., President
P. O. Box 38
New Hope, Virginia 24469

North River Telephone Cooperative
Mr. W. Richard Fleming, Manager
P. O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative
Mr. Stanley G. Cumbee, General Manager
P. O. Box 549
Pembroke, Virginia 24136-0549

Peoples Mutual Telephone Company, Inc.
Mr. E. B. Fitzgerald, Jr.
President & General Manager
P. O. Box 367
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P. O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President
P. O. Box 459
Edinburg, Virginia 22824

United Telephone-Southeast, Inc.
Mr. H. John Brooks
Vice President & General Manager
112 Sixth Street, P. O. Box 699
Bristol, Tennessee 37620

Virginia Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

..... Appendix C

INTER-EXCHANGE CARRIERS

AT&T Communications of Virginia
Ms. Wilma R. McCarey, General Attorney
3033 Chain Bridge Road, Room 3D
Oakton, Virginia 22185-0001

CF-W Network Inc.
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia
Mr. James W. Spradlin, III
Government & Industry Relations
P.O. Box 6788
Charlottesville, Virginia 22903

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Metromedia Communications Corporation
d/b/a LDDS Metromedia Communications
Mr. Joseph Kahl, Manager
Regulatory Affairs
One Meadowlands Plaza
East Rutherford, New Jersey 07073

Contel of Virginia, Inc.

Mr. Stephen Spencer
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Institutional Communications Company - Virginia
Ms. Dee Kindel
8100 Boone Boulevard, Suite 500
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia
Robert C. Lopardo
Senior Attorney
1133 19th Street, N.W., 11th Floor
Washington, D.C. 20036

R&B Network, Inc.
Mr. Allen Layman, Executive Vice President
P. O. Box 174
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President & General Manager
P. O. Box 459
Edinburg, Virginia 22824

SouthernNet of Va., Inc.
Peter H. Reynolds, Director
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

TDX Systems, Inc.
Mr. Charles A. Tievsky, Manager
Legal and Regulatory Affairs
1919 Gallows Road
Vienna, Virginia 22180

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak
Staff Director, Regulatory Affairs
1850 "M" Street, N.W. Suite 110
Washington, DC 20036

Wiltel of Virginia
Brad E. Mutschelknaus, Esquire
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

Mr. Richard D. Gary
Hunton & Williams
Virginia MetroTel, Inc.
Riverfront Plaza
East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

APPENDIX D

CELLULAR TELEPHONE COMPANIES

Blue Ridge Cellular, Inc.
Mr. George L. Lyon, Jr.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D. C. 20006

Centel Cellular Company of Charlottesville
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Centel Cellular Company of Danville
Mrs. Lorraine Mockus Buerger
External Affairs Manager
8725 Higgins Road, Suite 650
Chicago, IL 60631

Centel Cellular Company of Lynchburg
Mrs. Lorraine Mockus Buerger
External Affairs Manager
8725 Higgins Road, Suite 650
Chicago, IL 60631

Centel Cellular Company of Virginia
Virginia RSA's 4, 6, 7, 9, 11
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Centel Cellular Company of Virginia
Virginia RSA 8
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Century Roanoke Cellular Corp.
d/b/a Cellular One
C. Thomas Green, III, Esquire
Hirschler, Fleischer, Weinberg, Cox & Allen
Main Street Centre
629 East Main Street, P. O. Box 1Q
Richmond, Virginia 23202

Charlottesville Cellular Partnership
d/b/a Cellular One
Mr. C. Thomas, Green, III
Hirschler, Fleischer, Weinberg, Cox & Allen
629 East Main Street
P. O. Box 1Q
Richmond, Virginia 23202

Contel Cellular of Richmond, Inc.
Roanoke Area
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Contel Cellular of Richmond, Inc.
Buckingham Area
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Contel Cellular of Tennessee, Inc.
Mr. Richard D. Gary
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Danville Cellular Telephone Company
Limited Partnership
Mr. George L. Lyon, Jr.,
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D. C. 20006

JMW, Inc.
Mr. Richard D. Gary
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Lynchburg Cellular Joint Venture
Mr. C. Thomas, Green, III
Hirschler, Fleischer, Weinberg, Cox & Allen
629 East Main Street
P. O. Box 1Q
Richmond, Virginia 23202

Petersburg Cellular Partnership
C. Thomas Green, III, Esquire
Hirschler, Fleischer, Weinberg, Cox & Allen
Main Street Centre
629 East Main Street, P. O. Box 1Q
Richmond, Virginia 23202

Mr. George Hatter, General Manager
RCTC Wholesale Company
9211 Arboretum Parkway, Suite 500
Richmond, Virginia 23236

SDK Enterprises
Philip F. Abraham, Esquire
Hazel & Thomas
411 East Franklin Street, Suite 600
P. O. Box 3-K
Richmond, Virginia 23206

Southwestern Bell Mobile Systems, Inc.
Steven W. Pearson, Esquire
Hazel & Thomas
411 East Franklin Street
P. O. Box 3-K
Richmond, Virginia 23206

Suburban Cellular Inc.
Steven W. Pearson, Esquire
Hazel & Thomas
411 East Franklin Street
P. O. Box 3-K
Richmond, Virginia 23206

Telespectrum of Virginia, Inc.
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Virginia Cellular, Inc.
Steven W. Pearson, Esquire
Hazel & Thomas
411 East Franklin Street
P. O. Box 3-K
Richmond, Virginia 23206

Virginia RSA 1 Limited Partnership
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Virginia RSA 2 Limited Partnership
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Virginia RSA 3 Limited Partnership
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia RSA 4 Limited Partnership
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia RSA #4, Inc.
Eric M. Page, Esquire

Thorsen, Page & Marchant
316 West Broad Street
Richmond, Virginia 23220

Virginia RSA 5 Limited Partnership
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia RSA #5, Inc.
Eric M. Page, Esquire
Thorsen, Page & Marchant
316 West Broad Street
Richmond, Virginia 23220

Virginia RSA 6 Cellular Limited Partnership
Mr. Carl A. Rosberg
Senior Vice President-Operations
401 Spring Lane, Suite 300
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Virginia RSA #7, Inc.
Eric M. Page, Esquire
Thorsen, Page & Marchant
316 West Broad Street
Richmond, Virginia 23220

Virginia 10 RSA Limited Partnership
Mr. Christopher French
124 South Main Street
Edinburg, Virginia 22824

Virginia Cellular Limited Partnership
Norfolk/Newport News Areas
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership
Richmond and Petersburg Areas
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 8
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 9
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 11
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 12
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Metronet Inc.
Edward Flippen, Esquire
Mays & Valentine
Sovran Center
1111 East Main Street
P. O. Box 1122
Richmond, Virginia 23208

Washington D.C. SMSA Limited Partnership
Bell Atlantic Mobile Systems
Mr. Thomas C. Blum, Director
External Affairs
180 Washington Valley Road
Bedminster, New Jersey 07921

VA.R. Doc. No. R94-309; Filed December 6, 1993, 2:35 p.m.

.....AT RICHMOND, DECEMBER 3, 1993

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

.....CASE NO. PUC930013

Ex Parte: In the matter of adopting
rules implementing the Pay Telephone
Registration Act

AMENDING ORDER

On November 24, 1993, the State Corporation Commission ("Commission") issued an Order adopting rules implementing the Pay Telephone Registration Act ("the Act"), Va. Code §§ 56-508.15 and -508.16. Among other things, Rule 4 of these Rules provided that for the first year of the Pay Telephone Registration Act, the registration fee for private pay telephone providers ("PPTs") would be due by not later than January 1, 1994. This Rule further provides for a late filing fee of ten

percent (10%) or $25.00, whichever is greater, to be assessed for all first year applications for registration received after January 1, 1994, and for late payments received after January 1st in successive years. Upon further consideration thereof, we recognize that PPTs have not had to register with the Commission or pay registration fees prior to the effective date of the Pay Telephone Registration Act and the adoption of the rules implementing that Act. Further, we acknowledge that the Act establishes a relatively short time frame in which to register pay telephone providers.

WHEREFORE, IN CONSIDERATION of the foregoing, the Commission is of the opinion and finds it appropriate to extend the date by which late filing fees will be assessed for first year applications only . Thereafter, late filing fees will be assessed for all applications and registration payments received after January 1st in successive years. Therefore, Rule 4 should be amended in pertinent part to read as follows:

> . . . . In the first year of the Pay Telephone Registration Act this fee will be due by not later than ~~January~~ February 1, 1994, and will be assessed and payable to the Commission by January 1st of each successive year. A late filing fee of ten percent (10%) or $25.00, whichever is greater, will be assessed for all first year applications received after ~~January~~ February 1, 1994, and for late payments received after January 1st in successive years . . . . (Underscore indicates insertions. Strikethrough indicates deletions.)

In all other respects, the Rules shall remain as set forth in Appendix A to the November 24 Final Order.

Accordingly, IT IS ORDERED:

(1) That Rule 4 set forth in Appendix A to the November 24, 1993 Final Order shall be revised in pertinent part as provided herein;

(2) That, in all other respects the Rules shall remain as set out in Appendix A to the November 24, 1993 Final Order; and

(3) That a copy of this Order, together with the rules, as further revised herein, found in Appendix A hereto shall be published in the Virginia Register.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: all Virginia local exchange companies as set out in Appendix B hereto; Virginia's certificated interexchange carriers as set out in Appendix C attached hereto; all cellular carriers regulated by the Commission as set out in Appendix D attached hereto; Allan R. Staley, Esquire , P.O. Box 12180, Newport News, Virginia 23612-2180; Kathleen Villacorta, Esquire, Wiggins & Villacorta, P.A., P.O. Drawer 1657, Tallahassee, Florida 32302; Brad E. Mutschelknaus, Esquire and Rachel Rothestein, Esquire, Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006; Richard D. Gary, Esquire, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; William S. Edwards, 5000 Cox Road, Suite 120, Glen Allen, Virginia 23060; Karlyn D. Stanley, Esquire, 3033 Chainbridge Road, Room 3D, Oakton, Virginia 22185-0001; James B. Wright, 112 Sixth Street, Bristol, Tennessee 37620; A.E. Hantwerker, P.O. Box 1163, Richmond, Virginia 23209; Lesla Lehtonen, Esquire, 1850 M Street, N.W., Suite 1110, Washington, D.C. 20036; Stephen D. Sinclair 12000 Government Center Parkway, Suite 433, 4th Floor, Fairfax, Virginia 22035-0045; Joe W. Foster, Esquire, P.O. Box 110, MC 7, Tampa, Florida 33601; Warner F. Brundage, Jr., Esquire, P.O. Box 27241, Richmond, Virginia 23261; Kenneth F. Melley, Jr., 9311 San Pedro, Suite 300, San Antonio, Texas 78216; Tim Linger, P.O. Box 2261, Winchester, Virginia 22604; Thomas J. Christoffel, 607 Midland Avenue, Front Royal, Virginia 22630; Pamela Barefoot, P.O. Box 180, 108 Market Street, Onancock, Virginia 23417; Paul and Geneva Irby, Route 1, Box 203, Gladys, Virginia 24554; Darlene Isom, Route 4, Box 223, Martinsville, Virginia 24112; Bettie M. Cooper, 7339 Barberry Lane, North Short Point, Norfolk, Virginia 23505-3001; Bettie Jo Scarpa, 833 Lipton Drive, Newport News, Virginia 23602; James Scheiman, 338 Ambler Court, Hampton, Virginia 23669-1719; Patricia Hailey, HCR Box 37, Red House, Virginia 23963; Charles R. Lingafelt, P.O. Box 367, Gretna Virginia 24557; Jean L. Kiddoo, Esquire, Dana Frix, Esquire and Ky Booth Kirby, Esquire, Swidler & Berlin, 3000 K Street N.W., Suite 300, Washington, D.C. 20007-5116; Jean Ann Fox, 114 Coachman Drive, Yorktown, Virginia 23693; Lowell Chaney, President, Virginia Telecom Corporation, P.O. Box 787, Chester, Virginia 23831; and the Commission's Office of General Counsel and Divisions of Communications, Public Service Taxation, and Public Utility Accounting.

..... APPENDIX A

RULES FOR PAY TELEPHONE SERVICE AND INSTRUMENTS

THE FOLLOWING RULES SHALL APPLY TO ALL PAY TELEPHONE INSTRUMENTS INSTALLED OR MADE AVAILABLE FOR PUBLIC USE WITHIN THE COMMONWEALTH OF VIRGINIA, WHETHER OWNED AND OPERATED BY A LOCAL EXCHANGE COMPANY, AN INTEREXCHANGE CARRIER, A CELLULAR CARRIER, OR A PRIVATELY OWNED PAY TELEPHONE SERVICE PROVIDER.

1. Local exchange telephone companies, interexchange carriers, and cellular carriers are authorized to provide pay telephone service within their certificated areas in the Commonwealth of Virginia. Private pay telephone service providers, including local exchange companies, interexchange carriers and cellular carriers wishing to provide pay telephone service as providers outside of their certificated service territories, are authorized, when they have been properly registered with the State Corporation Commission (SCC), to provide pay telephone service anywhere within the Commonwealth of Virginia. The rules contained herein apply to local exchange telephon

companies, interexchange carriers, and private pay telephone service providers. Restricted access pay telephone instruments provided to confinement facilities are excluded from the application of these rules. Cellular carriers must conform to Rules 3 and 13, but are otherwise excluded from the application of these rules. Should circumstances such as, for example, consumer complaints make it necessary, the Commission may in its own discretion amend these rules for further application to cellular pay telephone providers and to restricted access instruments provided to confinement facilities.

2. Reliable connections to the telecommunications network and high quality service to end users is expected of all pay telephone providers.

3. Any SCC certificated local exchange company, interexchange carrier, or cellular carrier who is a provider of pay telephone service must submit a notarized letter to the SCC by not later than January 1, 1994, which attests to that fact. If any SCC certificated local exchange, interexchange, or cellular carrier is not a pay telephone service provider as of January 1, 1994 and, subsequent to that date, plans to become a provider of that service, they must first submit a notarized letter to the SCC attesting to its intent. The letters as described in this rule should be addressed to the Division of Communications, P.O. Box 1197, Richmond, Virginia 23209.

4. The State Corporation Commission assesses a nonrefundable registration fee each year for each private pay telephone operated in Virginia, including those telephones operated by local exchange companies, interexchange carriers and cellular carriers providing pay telephone service outside of their certificated service areas. The fee is $10.00 per year per private pay telephone operated for one or two (1 or 2) pay telephones, and $8.00 per private pay telephone operated for three (3) or more pay telephones. The provider must submit this fee with the completed Commission form in order to become registered. In the first year of the Pay Telephone Registration Act this fee will be due by not later than January 1, 1994, and will be assessed and payable to the Commission by January 1st of each successive year. A late filing fee of ten percent (10%) or $25.00, whichever is greater, will be assessed for all first year applications received after January 1, 1994, and for late payments received after January 1st in successive years. After the Commission processes a form and completes the registration process no refunds on fees received will be allowed. Commission forms may be obtained by writing to the Division of Communications, P.O. Box 1197, Richmond, Virginia 23209 or by calling the Division of Communications at (804) 371-9420.

5. Private pay telephone service may be provided only through telephone instruments registered by the Federal Communications Commission (FCC).

6. Pay telephone instruments must be equipped to receive incoming calls unless they are prominently marked with either the words "OUTGOING CALLS ONLY", "NO INCOMING CALLS" or other language deemed acceptable by the Commission which will reasonably advise the user that no incoming service is available.

7. All providers of privately owned pay telephone service must notify the area local exchange carrier of a pay telephone instrument's connection, location, pay telephone provider's SCC registration number, and such other details as the local exchange company may need for billing purposes. Failure to provide accurate information could result in the instrument not being connected or being disconnected.

8. Where business flat rate service is available, local exchange companies will furnish access lines to privately owned pay telephones at a flat rate not to exceed the private branch exchange trunk flat rate. Where available, local exchange companies will offer optional message rate and/or measured rate business service access lines to privately owned pay telephone providers.

9. All pay telephone service providers must furnish local directory number information on their pay telephone instruments. End users of private pay telephones may be charged by the private pay telephone providers for local directory assistance service. The maximum local directory assistance charge from a private pay telephone shall be determined by rounding the local exchange company charge up to the nearest multiple of $.05. Any long distance directory assistance charge applied to the pay telephone service provider by certificated carriers may be passed on to the pay telephone instrument user.

10. All pay telephone instruments must be equipped for dial tone first.

11. All pay telephone instruments must provide calling without a charge to 911 where that number is utilized by emergency agencies. All pay telephone instruments must allow consumers to reach an operator without charge by dialing "Operator ("0")". The operator whom the consumer reaches must provide prompt, efficient, and accurate emergency service to a consumer when requested. The Commission may require a pay telephone provider to route "Operator ("0")" calls to the LEC Operator serving the area in which the instruments of the pay telephone provider are located if the operator service whom the pay telephone provider uses does not provide prompt, efficient and accurate emergency service to a consumer when requested.

12. The maximum rate for local calls or extended area calls originating from all pay telephone instruments, whether the call is completed coin paid, billed collect, billed to a credit card, or billed to a third number, may not exceed the rate approved for the area local exchange company including any operator assistance charges. However, a private pay telephone provider may initiate a proceeding before the Commission to prove that its costs cannot reasonably be met under the rate caps contained

herein.

13. The charge for all intrastate toll calls placed from local exchange company, interexchange carrier, or cellular carrier owned pay telephone instruments shall be as specified in the tariffs on file with the Commission. The maximum charge for all intrastate, intraLATA toll calls placed from all privately owned pay telephone instruments may not exceed the approved charge for similarly rated calls, including any operator assistance charges, as specified in the area local exchange company tariff, plus a surcharge of $1.00. The maximum charge for all intrastate, interLATA toll calls placed from privately owned pay telephone instruments may not exceed the charge for similarly rated calls as specified in the tariffs of AT&T, plus a surcharge of $1.00. However, a private pay telephone provider may initiate a proceeding before the Commission to prove that its costs cannot reasonably be met under the rate caps contained herein.

14. All pay telephone service providers must post consumer information and instructions on their pay telephone instruments as specified in the attachment to these rules.

15. In providing intrastate toll service, all pay telephone service providers must allow dialed user access without charge from their pay telephone instruments to all operator service providers' networks through their "950", "800", or "1-0-XXX-0+" numbers. Dialed user access without charge must also be allowed to the local exchange operator. In those cases where the access code "0" is reserved for carriers other than the local exchange company operator, access to the local exchange operator must be provided through the access code "*0".

16. All coin operated pay telephone instruments must accept any combination of nickels, dimes, and quarters for local and long distance calling charges. All coin operated pay telephone instruments must return any deposited amount if the call is not completed.

17. All pay telephone service providers must assure that a process exists for making prompt refunds to customers.

18. All pay telephone service providers must make all reasonable efforts to minimize the extent and duration of service interruptions. Ninety percent to one hundred percent (90 - 100%) of all pay telephone instruments which are reported as being out of service, when the trouble condition does not require construction work, must be restored to service within twenty-four (24) hours of the report receipt. The 24 hour clearance standard excludes trouble reports received on Sundays, legal holidays, and during emergency operating conditions. Out of service reports which require construction must be cleared within five business days of report receipt.

19. Local exchange companies must furnish private pay telephone service providers who operate within their certificated areas a listing of all central office codes working in their area. In addition, the local exchange companies must also provide information to private pay telephone service providers on local and extended calling areas. This information must be updated by the local exchange companies and reissued to the private pay telephone service providers as central office codes are added or deleted and as changes occur in local calling and extended calling areas. If local exchange companies wish to charge private pay telephone providers for furnishing the above described information they should submit tariffs for Commission approval which describe their proposal.

20. All pay telephone instruments must conform to the requirements and the timetables which are prescribed in the Americans with Disabilities Act.

21. Failure to comply with the rules contained herein may result in appropriate action by the State Corporation Commission to include disconnection of pay telephone instruments, fines, loss of registration for private pay telephone providers, loss of authority to engage in the pay telephone business for certificated carriers, or any combination of these penalties which, in the judgment of the Commission, is necessary to protect the public interest. The sanctions set out in this rule are in addition to any remedies that may be available through the Virginia Public Telephone Information Act.

22. If it finds that the action is consistent with the public interest, the Commission may exempt a pay telephone provider from some or all of the rules contained herein.

ATTACHMENT TO COMMISSION RULES FOR PAY TELEPHONE SERVICE AND INSTRUMENTS

Rule No. 14 requires that all pay telephone service providers must post consumer information and instructions on their pay telephone instruments as specified in this attachment. Pay telephone instruction cards must contain, at a minimum, the following information:

1. Clear operating instructions.

2. Physical address and phone number of the pay telephone instrument.

3. Ownership of the instrument, including the owner's name, address, and contact telephone number.

4. Procedures for repair, refunds, and billing disputes, including specific contact telephone numbers for 24-hour contact service.

5. Instructions on how to contact both local and long distance directory assistance.

6. Prominent instructions specifying how to reach the local exchange operator.

7. Clear and prominent instructions on how pay telephone users may reach emergency agencies. These instructions shall refer to "911" where that code is in use as a locality's emergency agency contact number. Where "911" is not in use, the instructions must specify that the desired emergency agency's telephone number be called or dial "0" for emergency assistance.

8. If the pay telephone instrument is not equipped to receive incoming calls, prominent instructions which read "OUTGOING CALLS ONLY", "NO INCOMING CALLS", or other language deemed acceptable by the Commission which will reasonably advise the user that no incoming service is available must be posted.

9. Instructions on how to reach a pay telephone instrument user's preferred long distance or interexchange carrier.

10. The identity of the company normally making the charge for any intrastate long distance or local operator assisted call not handled by the local exchange company operator.

11. A conspicuous notice stating "For long distance rates, dial.....". The listed number shall be toll free to the pay telephone instrument user and shall connect the user to the company normally making the charge for any intrastate long distance or local operator assisted call originating from the pay telephone instrument. The party to whom the pay telephone instrument user is connected shall be able to quote a specific rate for each call upon inquiry.

12. Any and all other notices or information required by the Virginia Public Telephone Information Act (VPTIA).

.....Appendix B

TELEPHONE COMPANIES IN VIRGINIA

Amelia Telephone Corporation
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

Amelia Telephone Corporation
Mr. Raymond L. Eckels, Manager
P. O. Box 76
Amelia, Virginia 23002

Buggs Island Telephone Cooperative
Mr. M. Dale Tetterton, Jr., Manager
P. O. Box 129
Bracey, Virginia 23919

Burke's Garden Telephone Exchange
Ms. Sue B. Moss, President
P. O. Box 428
Burke's Garden, Virginia 24608

Central Telephone Company of Virginia
Mr. Martin H. Bocock
Vice President and General Manager
P. O. Box 6788
Charlottesville, Virginia 22906

Chesapeake & Potomac Telephone Company
Mr. Hugh R. Stallard, President
and Chief Executive Officer
600 East Main Street
P.O. Box 27241
Richmond, Virginia 23261

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P. O. Box 137
Floyd, Virginia 24091

Clifton Forge-Waynesboro Telephone Company
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Contel of Virginia, Inc.
Mr. Edward J. Weise, President
9380 Walnut Grove Road
P. O. Box 900
Mechanicsville, Virginia 23111-0900

GTE South
Mr. Thomas R. Parker
Associate General Counsel
Law Department
P.O. Box 110 - Mail Code: 7
Tampa, Florida 33601-0110

Highland Telephone Cooperative
Mr. Elmer E. Halterman, General Manager
P.O. Box 340
Monterey, Virginia 24465

Mountain Grove-Williamsville
Telephone Company
Mr. L. Ronald Smith
President/General Manager
P. O. Box 105
Williamsville, Virginia 24487

New Castle Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

New Hope Telephone Company
Mr. K. L. Chapman, Jr., President
P. O. Box 38

New Hope, Virginia 24469

North River Telephone Cooperative
Mr. W. Richard Fleming, Manager
P. O. Box 236, Route 257
Mt. Crawford, Virginia 22841-0236

Pembroke Telephone Cooperative
Mr. Stanley G. Cumbee, General Manager
P. O. Box 549
Pembroke, Virginia 24136-0549

Peoples Mutual Telephone Company, Inc.
Mr. E. B. Fitzgerald, Jr.
President & General Manager
P. O. Box 367
Gretna, Virginia 24557

Roanoke & Botetourt Telephone Company
Mr. Allen Layman, President
Daleville, Virginia 24083

Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P. O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President
P. O. Box 459
Edinburg, Virginia 22824

United Telephone-Southeast, Inc.
Mr. H. John Brooks
Vice President & General Manager
112 Sixth Street, P. O. Box 699
Bristol, Tennessee 37620

Virginia Telephone Company
Mr. Bruce H. Mottern, Director
State Regulatory Affairs
P.O. Box 22995
Knoxville, Tennessee 37933-0995

.....Appendix C

INTER-EXCHANGE CARRIERS

AT&T Communications of Virginia
Ms. Wilma R. McCarey, General Attorney
3033 Chain Bridge Road, Room 3D
Oakton, Virginia 22185-0001

CF-W Network Inc.
Mr. James S. Quarforth, President
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Central Telephone Company of Virginia
Mr. James W. Spradlin, III
Government & Industry Relations
P.O. Box 6788
Charlottesville, Virginia 22903

Citizens Telephone Cooperative
Mr. James R. Newell, Manager
Oxford Street
P.O. Box 137
Floyd, Virginia 24091

Metromedia Communications Corporation
d/b/a LDDS Metromedia Communications
Mr. Joseph Kahl, Manager
Regulatory Affairs
One Meadowlands Plaza
East Rutherford, New Jersey 07073

Contel of Virginia, Inc.
Mr. Stephen Spencer
1108 East Main Street, Suite 1108
Richmond, Virginia 23219

Institutional Communications Company Virginia
Ms. Dee Kindel
8100 Boone Boulevard, Suite 500
Vienna, Virginia 22182

MCI Telecommunications Corp. of Virginia
Robert C. Lopardo
Senior Attorney
1133 19th Street, N.W., 11th Floor
Washington, D.C. 20036

R&B Network, Inc.
Mr. Allen Layman, Executive Vice President
P. O. Box 174
Daleville, Virginia 24083
Scott County Telephone Cooperative
Mr. James W. McConnell, Manager
P.O. Box 487
Gate City, Virginia 24251

Shenandoah Telephone Company
Mr. Christopher E. French
President & General Manager
P. O. Box 459
Edinburg, Virginia 22824

SouthernNet of Va., Inc.
Peter H. Reynolds, Director
780 Douglas Road, Suite 800
Atlanta, Georgia 30342

TDX Systems, Inc.
Mr. Charles A. Tievsky, Manager
Legal and Regulatory Affairs
1919 Gallows Road
Vienna, Virginia 22180

Sprint Communications of Virginia, Inc.
Mr. Kenneth Prohoniak

Staff Director, Regulatory Affairs
1850 "M" Street, N.W. Suite 110
Washington, DC 20036

Wiltel of Virginia
Brad E. Mutschelknaus, Esquire
Wiley, Rein and Fielding
1776 K Street, N.W.
Washington, DC 20006

Mr. Richard D. Gary
Hunton & Williams
Virginia MetroTel, Inc.
Riverfront Plaza
East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

..... APPENDIX D

CELLULAR TELEPHONE COMPANIES

Blue Ridge Cellular, Inc.
Mr. George L. Lyon, Jr.
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D. C. 20006

Centel Cellular Company of Charlottesville
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Centel Cellular Company of Danville
Mrs. Lorraine Mockus Buerger
External Affairs Manager
8725 Higgins Road, Suite 650
Chicago, IL 60631

Centel Cellular Company of Lynchburg
Mrs. Lorraine Mockus Buerger
External Affairs Manager
8725 Higgins Road, Suite 650
Chicago, IL 60631

Centel Cellular Company of Virginia
Virginia RSA's 4, 6, 7, 9, 11
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Centel Cellular Company of Virginia
Virginia RSA 8
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Century Roanoke Cellular Corp.
d/b/a Cellular One
C. Thomas Green, III, Esquire
Hirschler, Fleischer, Weinberg, Cox & Allen
Main Street Centre
629 East Main Street
P. O. Box 1Q
Richmond, Virginia 23202

Charlottesville Cellular Partnership
d/b/a Cellular One
Mr. C. Thomas, Green, III
Hirschler, Fleischer, Weinberg, Cox & Allen
629 East Main Street
P. O. Box 1Q
Richmond, Virginia 23202

Contel Cellular of Richmond, Inc.
Roanoke Area
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Contel Cellular of Richmond, Inc.
Buckingham Area
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Contel Cellular of Tennessee, Inc.
Mr. Richard D. Gary
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Danville Cellular Telephone Company
Limited Partnership
Mr. George L. Lyon, Jr.,
Lukas, McGowan, Nace & Gutierrez
1819 H Street, N.W.
Seventh Floor
Washington, D. C. 20006

JMW, Inc.
Mr. Richard D. Gary
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219

Lynchburg Cellular Joint Venture
Mr. C. Thomas, Green, III
Hirschler, Fleischer, Weinberg, Cox & Allen

629 East Main Street
P. O. Box 1Q
Richmond, Virginia 23202

Petersburg Cellular Partnership
C. Thomas Green, III, Esquire
Hirschler, Fleischer, Weinberg, Cox & Allen
Main Street Centre
629 East Main Street
P. O. Box 1Q
Richmond, Virginia 23202

Mr. George Hatter, General Manager
RCTC Wholesale Company
9211 Arboretum Parkway, Suite 500
Richmond, Virginia 23236

SDK Enterprises
Philip F. Abraham, Esquire
Hazel & Thomas
411 East Franklin Street, Suite 600
P. O. Box 3-K
Richmond, Virginia 23206

Southwestern Bell Mobile Systems, Inc.
Steven W. Pearson, Esquire
Hazel & Thomas
411 East Franklin Street
P. O. Box 3-K
Richmond, Virginia 23206

Suburban Cellular Inc.
Steven W. Pearson, Esquire
Hazel & Thomas
411 East Franklin Street
P. O. Box 3-K
Richmond, Virginia 23206

Telespectrum of Virginia, Inc.
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Virginia Cellular, Inc.
Steven W. Pearson, Esquire
Hazel & Thomas
411 East Franklin Street
P. O. Box 3-K
Richmond, Virginia 23206

Virginia RSA 1 Limited Partnership
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Virginia RSA 2 Limited Partnership
Mrs. Lorraine Mockus Buerger
External Affairs Manager
O'Hara Plaza
8725 Higgins Road
Chicago, Illinois 60631

Virginia RSA 3 Limited Partnership
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia RSA 4 Limited Partnership
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia RSA #4, Inc.
Eric M. Page, Esquire
Thorsen, Page & Marchant
316 West Broad Street
Richmond, Virginia 23220

Virginia RSA 5 Limited Partnership
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia RSA #5, Inc.
Eric M. Page, Esquire
Thorsen, Page & Marchant
316 West Broad Street
Richmond, Virginia 23220

Virginia RSA 6 Cellular Limited Partnership
Mr. Carl A. Rosberg
Senior Vice President-Operations
401 Spring Lane, Suite 300
P. O. Box 1990
Waynesboro, Virginia 22980-1990

Virginia RSA #7, Inc.
Eric M. Page, Esquire
Thorsen, Page & Marchant
316 West Broad Street
Richmond, Virginia 23220

Virginia 10 RSA Limited Partnership
Mr. Christopher French
124 South Main Street
Edinburg, Virginia 22824

Virginia Cellular Limited Partnership
Norfolk/Newport News Areas
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower

951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership
Richmond and Petersburg Areas
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 8
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 9
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 11
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Cellular Limited Partnership RSA 12
Mr. Richard D. Gary
Hunton & Williams
River Front Plaza, East Tower
951 E. Byrd Street
Richmond, Virginia 23219

Virginia Metronet Inc.
Edward Flippen, Esquire
Mays & Valentine
Sovran Center
1111 East Main Street
P. O. Box 1122
Richmond, Virginia 23208

Washington D.C. SMSA Limited Partnership
Bell Atlantic Mobile Systems
Mr. Thomas C. Blum, Director
External Affairs
180 Washington Valley Road
Bedminster, New Jersey 07921

VA.R. Doc. No. R94-310; Filed December 6, 1993, 2:34 p.m.

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

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

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: July 1, 1993.

Preamble:

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

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

§ 1. Authority, prior regulations, effective date.

A. This regulation is promulgated pursuant to the authority contained in § § ~~28.1-23,~~ ~~28.1-48.1~~ ~~and~~ ~~28.1-50~~ *28.2-201* of the Code of Virginia.

B. This regulation amends previous regulation VR 450-01-0034, Pertaining to the Taking of Striped Bass, which was promulgated and made effective on July ~~3, 1991~~ *September 1, 1992* .

C. The effective date of this regulation is ~~September 1, 1992~~ *July 1, 1993* .

§ 2. Purpose.

The purpose of this regulation is to provide for the continued recovery of Virginia's striped bass stocks.

The provisions pertaining to aquaculture serve to prevent escapement of cultured hybrid striped bass into the natural environment and to minimize the impact of cultured fish in the market place on the enforcement of other provisions in this regulation.

§ 3. Definitions.

A. Striped bass - any fish of the species Morone saxatilis including any hybrid striped bass.

B. Spawning rivers - the James, Pamunkey, Mattaponi and Rappahannock Rivers including all their tributaries.

C. Spawning reaches - sections within the spawning rivers as follows:

1. James River: From a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point;

2. Pamunkey River: From the Route 33 bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore;

3. Mattaponi River: From the Route 33 bridge at West Point upstream to the Route 360 bridge at Aylett;

4. Rappahannock River: From the Route 360 bridge at Tappahannock upstream to the Route 3 bridge at Fredericksburg.

§ 4. Commercial fishing, recreational fishing, and marketing seasons.

A. Except as provided in § 7 of this regulation, the open-commercial fishing seasons for striped bass in Virginia tidal waters shall be as specified below:

1. For pound nets, gill nets and haul seines, from ~~October 28,1992~~ *September 15, 1993* , through ~~November 24, 1992~~ *December 31, 1993* .

2. For fyke nets, from March 1, ~~1993~~ *1994* , through March 31, ~~1993~~ *1994* .

B. The open recreational fishing seasons, including fishing from charter boats and vessels, for striped bass in Virginia tidal waters shall be ~~October 10, 1992, through October 24, 1992, and November 26, 1992, through December 12, 1992~~ *Thursday, Friday, Saturday, and Sunday of each week during the period beginning October 28, 1993, and ending on December 19, 1993* .

C. It shall be unlawful for any person to take or catch any striped bass from the tidal waters of Virginia other than during the applicable open fishing season as specified in paragraphs A and B above, or as modified by § 7 of this regulation.

D. It shall be lawful for any person to possess striped bass, including striped bass taken from waters other than Virginia tidal waters, at any time, under the following conditions.

1. The striped bass shall have been harvested legally in Virginia or another jurisdiction.

2. The striped bass shall be within the lawful minimum and maximum size limits as specified in § 5 of this regulation.

3. ~~After September 7, 1992,~~ All striped bass in the possession of any person for the purpose of sale, must be identified with a tamper evident sealed tag made of plastic, nylon or metal that has been approved *and*

issued by the appropriate authority in the jurisdiction of origin. Whole striped bass shall have tags attached directly to the fish as required by the jurisdiction of origin. Processed or filleted striped bass must be accompanied by the tags removed from the fish when processed.

4. When the striped bass are in the possession of any person other than the original harvester, for the purpose of resale, the striped bass shall be accompanied by a bill of sale which shall include the name of the seller, the permit or license number of the seller if such permit or license is required in the jurisdiction of origin, the date of sale, the pounds of striped bass in possession, the location of catch and the gear type used to harvest the striped bass.

§ 5. Minimum and maximum size limits, alteration prohibited, total length determination.

A. It shall be unlawful for any person to possess any striped bass measuring less than 18 inches, total length.

B. It shall be unlawful for any person to possess any striped bass taken from the Territorial Sea measuring less than 28 inches, total length.

C. It shall be unlawful for any person to possess any striped bass measuring greater than 36 inches ; total length , *except that during the open recreational season any recreational hook and line fisherman may catch and retain one striped bass 48 inches or greater per day* .

D. It shall be unlawful for any person, while aboard any boat or vessel or while fishing from shore or pier, to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

E. Total length shall be measured in a straight line from the tip of the nose of the striped bass to the tip of its tail.

§ 6. Gear restrictions.

A. During the period April 1 to May 31, of each year, both dates inclusive, a person may not set or fish any anchored or staked gill net within the spawning reaches. Drift (float) gill nets may be set or fished within the spawning reaches during this time period, but the fishermen must remain with such net while that net is in the fishing position and shall return all striped bass to the water immediately.

B. ~~The minimum mesh size of any gill net used for the harvest of striped bass shall be five inches, stretched measure.~~ *It shall be unlawful for any person to spear, to gaff or attempt to spear or gaff any striped bass, at any time.*

C. ~~Persons utilizing a vessel or boat in the harvest of striped bass by gill net shall be limited to 1800 feet of gill net per vessel.~~ *It shall be unlawful to place, set, or fish any gill net within 300 feet of any bridge or pier during the recreational open season specified in § 4 B.*

~~D. It shall be unlawful for any person utilizing a vessel or boat to harvest fish by gill net to have on board, possess or land striped bass in a vessel equipped with more than 1800 feet of gill net, or net with mesh size of less than five inches stretched measure.~~

~~E. It shall be unlawful for any person to spear, to gaff or attempt to spear or gaff any striped bass, at any time.~~

§ 7. Commercial harvest quotas.

A. During the open fishing seasons it shall be unlawful to harvest striped bass for commercial purposes by any method other than by gill net, pound net, haul seine, ~~or~~ fyke net , *or commercial hook-and-line* . The harvest of striped bass by any person using a gill net, pound net, haul seine, ~~or~~ fyke net , *or commercial hook-and-line* shall be presumed to be for commercial purposes and the amounts of such harvest shall be summed to the total allowable level of commercial harvest.

B. During the legal commercial harvest seasons of any calendar year, the total allowable sum of commercial harvest of striped bass by all legal harvest methods shall be 211,000 pounds of whole fish. At such time as the total harvest of striped bass reaches 211,000 pounds it shall be unlawful for any person to take, catch or land any striped bass by any method for commercial purposes.

C. ~~During the October 28, 1992, through November 24, 1992, gill net season,~~ The total allowable level of commercial striped bass harvest by gill net shall be ~~39,367~~ *147,700* pounds of whole fish. At such time as harvest of striped bass by gill net totals ~~39,367~~ *147,700* pounds, it shall be unlawful for any person to take, catch or land any striped bass by gill net.

D. The total allowable level of commercial striped bass harvest by pound net shall be 52,750 pounds of whole fish. At such time as the harvest of striped bass by pound net totals 52,750 pounds, it shall be unlawful for any person to take or land any striped bass by pound net.

E. The total allowable level of commercial striped bass harvest by haul seine shall be 6,330 pounds of whole fish. At such time as the harvest of striped bass by haul seine totals 6,330 pounds, it shall be unlawful for any person to take or land any striped bass by haul seine.

F. The total allowable level of commercial striped bass harvest for fyke net during the ~~1993~~ *1994* season shall be 4,220 pounds of whole fish. At such time as the harvest of striped bass by fyke net totals 4,220 pounds it shall be unlawful for any person to take, catch, or land any striped bass by fyke net.

G. In the event that the harvest of striped bass by any

single commercial gear exceeds its harvest level provided for in the preceding paragraphs such that the total allowable level of commercial harvest reaches or exceeds 211,000 pounds, during any calendar year, then all commercial harvest of striped bass shall cease. Such cessation of fishing shall apply to all gears even in the event other single gear quotas are not reached.

§ 8. Recreational gear limitation, Bag limit, sale of recreational catch.

A. It shall be unlawful for any person to take or to catch striped bass for recreational purposes with any gear other than a hook-and-line, rod-and-reel or hand line.

B. It shall be unlawful for any person using *recreational* hook-and-line, rod-and-reel, or hand-line to take and possess from Virginia tidal waters more than two striped bass per day *only one of which may equal or exceed 48 inches in length* . Any striped bass taken after the bag limit of two fish has been reached shall be returned to the water immediately.

C. When fishing from any boat or vessel, the daily bag limit shall be equal to the number of *licensed* persons on board the boat or vessel multiplied by two. Retention of the legal number of striped bass is the responsibility of the vessel captain or owner.

D. *It shall be unlawful for any licensed recreational fisherman to possess more than one striped bass 48 inches or greater in length at any time.*

~~D.~~ *E.* It shall be unlawful for any person to sell, offer for sale, trade or barter any striped bass taken by *recreational* hook-and-line, rod-and-reel, or hand line. *This no sale provision shall not apply to persons possessing a commercial hook-and-line license that meet the other requirements of this regulation.*

§ 9. Individual commercial catch limits and mandatory tagging.

A. It shall be unlawful to land, or bring to shore, any commercially caught striped bass that has not been marked by the fishermen with a tamper evident, numbered tag provided by the Marine Resources Commission. Upon capture, tags shall be passed through the mouth of the fish and one gill opening; interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking.

B. For each of the commercial gear types, tags will be issued in equal amounts by the Marine Resources Commission to eligible fishermen, permitted as described in § 10 of this regulation, according to the available quotas described in § 7 of this regulation, and the estimated average weight of the striped bass caught.

C. If individual tag allocations exceed 30 tags per permittee, the tags will be distributed to permittees in two allotments. One-half of the tag allotment will be given to the fisherman prior to the start of the commercial season. The second half of the tag allotment, adjusted for average weight, if necessary, will be given to the fisherman after the fisherman has harvested all fish allowed by the initial tag allotment and has submitted to the commission a catch report detailing the weight of that harvest, the location of the harvest, and the amount of hours or days fished. Distribution of the second allotment of tags will be made no earlier than one week after the beginning of the commercial season to allow for verification of average fish weight.

D. Tags will be sequentially numbered and will only be valid for use by the fisherman to which the tags were allotted. It shall be unlawful for any person to transfer an unused tag to another individual, or to attach a tag he has not been allotted to a striped bass in the manner described in paragraphs A and B above.

E. Any attempt to alter a tag for the purpose of reuse shall constitute a violation of this regulation.

§ 10. Permits and reports.

A. It shall be unlawful for any commercial harvester, to take or attempt to take, striped bass without first having obtained a permit from the Marine Resources Commission or its agent. Permits will only be issued to commercial fishermen meeting the following conditions:

1. Fishermen shall apply for permits ~~from September 1-30, 1992~~ *by August 16, 1993,* to be eligible to fish during the fall season ~~1992~~ *1993* , and must apply for permits from January 4-29, ~~1993~~ *1994,* to be eligible to fish during the spring ~~1993~~ *1994* fyke net fishery. Applications outside of these time periods will not be accepted. Completed permit applications and supporting documents may be hand delivered or mailed to the Marine Resources Commission, 2600 Washington Avenue, P.O. Box 756, Newport News, Virginia 23607. Complete applications must be received ~~or post marked~~ *at the commission* no later than *5 p.m. on* the last day of the respective application periods.

2. Fishermen may apply only for a permit for a single type of commercial gear within a calendar year.

3. A copy of a valid gear license as required by Title ~~28.1~~ *28.2* of the Code of Virginia, corresponding to the type of gear being applied for, must be presented at the time of application for the permit.

4. Applicants shall have held a valid striped bass commercial gear permit in 1990 or 1991.

5. Applicants shall have reported striped bass fishing activity in accordance with 1990 , ~~and~~ 1991 , *and 1992* striped bass regulations.

6. Applicants shall provide valid state or federal income tax forms ~~or a notarized statement certifying that greater than~~ *(Form 1040 and Schedule 3, if applicable) to demonstrate* that greater than 50% of their earned income for the previous year was derived from commercial fishing. Additional documentation of income shall be provided by the applicant upon request by personnel from the Marine Resources Commission.

B. *The commission may grant exceptions to the limited entry criteria listed above based on hardship. Any person requesting an exception shall provide in writing an explanation of their hardship and all pertinent information relating to the criteria in subsection A of this section. All exception requests must be received at the commission according to the application deadlines specified in subdivision A 1.*

~~B.~~ *C.* It shall be unlawful to fish for striped bass from a charter boat or charter vessel taking hook and line fishermen for hire, unless the captain of the boat has obtained a permit from the Marine Resources Commission and is the holder of a Coast Guard charter license.

~~C.~~ *D.* It shall be unlawful for any person to purchase striped bass from a commercial harvester for the purpose of resale without first obtaining a permit from the Marine Resources Commission.

~~D.~~ *E.* Possession of a striped bass permit shall authorize Marine Resources Commission personnel or their designees to inspect, measure, weigh, and take biological samples of the striped bass catch.

~~E.~~ *F.* In addition to the reporting requirements described in § 9 C of this regulation, all commercial harvesters of striped bass shall report to the Marine Resources Commission on forms provided by the commission all quantities of striped bass harvested, the gear utilized to harvest, the water body fished, and the amount of hours or days fished.

1. Seasonal reports shall cover the specified season.

2. All seasonal reports shall be forwarded to the commission immediately and shall be postmarked no later than the first Wednesday immediately following the last day of the season described in the report.

3. Any tags issued as described in § 9 of this regulation and not used by the fisherman shall be returned to the commission with the seasonal report.

~~F.~~ *G.* All buyers of striped bass from commercial harvesters shall verbally report to the Marine Resources Commission on a daily basis the quantities of striped bass purchased, the permit number of the harvesters selling the fish and the gear utilized by the harvesters. Written reports of daily purchases and sales for each commercial fishing season shall be forwarded to the commission no later than the first Wednesday immediately following the last day of each open season.

~~G.~~ *H.* Charter boat captains shall report to the Marine Resources Commission on forms provided by the commission all daily quantities of striped bass caught and harvested and daily fishing hours by themselves or their customers, respectively, at the end of the open fishing season. Written reports shall be forwarded to the commission ~~immediately at the end of the season and shall be postmarked no later than December 10, 1992~~ *no later than the first Wednesday following the last day of the open season.*

~~H.~~ *I.* Failure of any person permitted to harvest, buy or sell striped bass, to submit the required written or oral report for any fishing day shall constitute a violation of this regulation.

~~I.~~ *J.* Permits must be in the possession of the permittee while harvesting, selling, or possessing striped bass. Failure to possess the appropriate permit shall constitute a violation of this regulation.

§ 11. Aquaculture of striped bass and hybrid striped bass.

A. Permit required.

It shall be unlawful for any person, firm, or corporation to operate an aquaculture facility without first obtaining a permit from the Marine Resources Commission. Such permit shall authorize the purchase, possession, sale, and transportation of striped bass or hybrid striped bass in accordance with the other rules contained in this section.

B. Application for and term of permit.

The application for a striped bass aquaculture facility shall state the name and address of the applicant, the type and location of the facility, type of water supply, location of nearest tidal waters or tributaries to tidal water, and an estimate of production capacity. All aquaculture permits shall expire on December 31 of the year of issue and are not transferable. Permits shall be automatically renewed by the Marine Resources Commission provided no structural changes in the facility have been made, the facility has been adequately maintained, and the permittee has complied with all of the provisions of this regulation.

C. Display of permit.

1. The original of each permit shall be maintained and prominently displayed at the aquaculture facility described therein.

2. A copy of such permit may be used as evidence of authorization to transport striped bass or hybrid striped bass to sell the fish away from the permitted facility under the conditions imposed in subsection G in this section.

D. Water supply; outfall; prevention of entry and escapement.

1. A striped bass or hybrid striped bass aquaculture facility may consist of one or more ponds, artificial impoundments, closed recirculating systems or a combination of the above.

2. No pond or impoundment used for striped bass or hybrid striped bass aquaculture may be constructed or situated on a natural water course that originates beyond the boundaries of private land upon which the pond or impoundment is located.

3. There shall be no direct and unscreened discharge from any facility to any natural watercourse. Except as provided in subdivision 4 below, outfall from any pond or impoundment shall be processed according to one of the following systems:

a. The outfall shall pass over a dry ground percolation system in which ground absorption of the water is sufficient to prevent the formation of a watercourse which is capable of reaching any natural watercourse. The outfall shall pass through a screened filter box prior to entering the percolation area.

b. The outfall shall pass through a chlorination process and retention pond for dechlorination. The outfall shall pass through a filter box prior to entering the chlorination system. Such facilities must also comply with regulations of the State Water Control Board.

4. If the outfall from an aquaculture facility may not conform to the systems described in subdivision 3 a or subdivision 3 b, above, then all of the following conditions shall be required:

a. The aquaculture of striped bass or hybrid striped bass shall be restricted to the use of cage culture. Such cages shall be constructed of a vinyl coated wire or high density polyethylene mesh material sufficient in size to retain the fish and all cages must be securely anchored to prevent capsizing. Covers shall be required on all cages.

b. The outfall from the pond or impoundment shall pass through a screened filter box. Such filter box shall be constructed of a mesh material sufficient in size to retain the fish and shall be maintained free of debris and in workable condition at all times.

c. The outfall from the screened filter box shall pass into a containment basin lined and filled with quarry rock or other suitable material to prevent the escapement of the fish from the basin.

5. Those facilities utilizing embankment ponds shall maintain sufficient freeboard above the spillway to prevent overflow.

E. Acquisition of fish, fingerlings, fry, and eggs.

Striped bass or hybrid striped bass fingerlings, fry, or eggs, may be obtained only from state permitted fish dealers and must be certified by the seller as striped bass or hybrid striped bass having a disease-free status. Each purchase or acquisition of striped bass or hybrid striped bass must be accompanied by a receipt or other written evidence showing the date, source, species, quantity of the acquisition and its destination. Such receipt must be in the possession of the permittee prior to transportation of such fish, fingerlings, fry, or eggs to the permitted facility. All such receipts shall be retained as part of the permittee's records. The harvesting of striped bass from the tidal waters of Virginia for the purpose of artificially spawning in a permitted aquaculture facility shall comply with all of the provisions of this regulation and state law including minimum size limits, maximum size limits, and closed harvesting seasons and areas.

F. Inspection of facilities.

1. Inspection. Agents of the Marine Resources Commission and the Department of Game and Inland Fisheries are authorized to make periodic inspection of the facilities and the stock of each operation permitted under this section. Every person engaged in the business of striped bass aquaculture shall permi such inspection at any reasonable time.

2. Diseased fish. No person permitted under this section shall maintain in the permitted facility any fish which shows evidence of any contagious disease listed in the then current list by the United States Fish and Wildlife Services as "certifiable diseases" except for the period required for application of standard treatment procedures or for approved disposition.

3. Disposition. No person permitted under this section shall sell or otherwise transfer possession of any striped bass or hybrid striped bass which shows evidence of a "certifiable disease" to any person, except that such transfer may be made to a fish pathologist for examination and diagnosis.

G. Sale of fish.

All striped bass or hybrid striped bass except fingerlings, fry, and eggs, which are the product of an aquaculture facility permitted under this section shall be packaged with a printed label bearing the name, address, and permit number of the aquaculture facility. When so packaged and labelled such fish may be transported and sold at retail or at wholesale for commercial distribution through normal channels of trade until reaching the ultimate consumer. Every such sale must be accompanied by a receipt showing the date of sale, the name, addres and permit number of the aquaculture facility, th

numbers and species of fish sold, and the name of the purchaser. Each subsequent resale must be accompanied by a receipt clearly identifying the seller by name and address, showing the number and species of the fish sold, the date sold, the permit number of the aquaculture facility and, if the sale is to other than the ultimate consumer, the name and address of the purchaser. The purchaser in possession of such fish must exhibit the receipt on demand of any law-enforcement officer. A duplicate copy of each such receipt must be retained for one year by the seller as part of the records of each transaction.

H. Records.

Each permitted aquaculture facility operator shall maintain a chronological file of the receipts or copies thereof showing the dates and sources of acquisitions of striped bass or hybrid striped bass and quantities thereof, and a chronological file of copies of the receipts of his sales required under subsection G of this section. Such records shall be segregated as to each permit year, shall be made available for inspection by any authorized agent of the Marine Resources Commission or Department of Game and Inland Fisheries, and shall be retained for at least one year following the close of the permit year to which they pertain.

I. Revocation and nonrenewal of permit.

In addition to the penalties prescribed by law, any violation of § 11 shall be grounds for revocation or suspension of the permit for the aquaculture facility for the balance of the permit year. No person whose permit has been revoked shall be eligible to apply for an aquaculture facility permit for a period of two years after the date of such revocation.

J. Importation of striped bass for the consumer market.

Striped bass or hybrid striped bass which are the product of an approved and state permitted aquaculture facility in another state may be imported into Virginia for the consumer market. Such fish shall be packaged and labelled in accordance with the provisions contained in subsection G of this section. Any sale of such fish also shall be accompanied by receipts as described in subsection G of this section.

K. Release of live fish.

Under no circumstance shall striped bass or hybrid striped bass which are the product of an aquaculture facility located within or outside the Commonwealth of Virginia be placed into the waters of the Commonwealth without first having notified the commission and having received written permission from the commissioner.

§ 12. Penalty.

A. As set forth in § ~~28.1-23~~ *28.2-903* of the Code of Virginia, any person, firm, or corporation violating any provision of this regulation shall be guilty of a Class ~~1~~ *3* misdemeanor.

B. Any person failing to submit any catch report as specified in §§ 9 and 10 of this regulation shall be prohibited from taking striped bass in the following calendar year.

VA.R. Doc. No. R94-311; Filed December 7, 1993, 3:20 p.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

BOARD FOR AUCTIONEERS

Title of Regulation: **VR 150-01-1. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 150-01-1:1. Public Participation Guidelines.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-316; Filed December 2, 1993, 2:51 p.m.

BOARD OF HISTORIC RESOURCES

Title of Regulation: **VR 390-01-03. Evaluation Criteria and Procedures for Designations by the Board of Historic Resources.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: December 6, 1993

VA.R. Doc. No. R94-344; Filed December 8, 1993, 10:38 a.m.

BOARD FOR OPTICIANS

Title of Regulation: **VR 505-01-0. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 505-01-0:1. Public Participation Guidelines.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-317; Filed December 2, 1993, 2:51 p.m.

DEPARTMENT OF PERSONNEL AND TRAINING

Title of Regulation: **VR 525-01-1. Public Participation Guidelines.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation. I recommend that the Department of Personnel and Training consider the suggestions made by the Department of Planning and Budget to clarify the revised proposal.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-321; Filed December 2, 1993, 2:50 p.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Title of Regulation: **VR 190-00-01. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 190-00-03. Polygraph Examiners Public Participation Guidelines.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon a review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-319; Filed December 2, 1993, 2:51 p.m.

VIRGINIA RACING COMMISSION

Title of Regulation: **VR 662-02-05. Satellite Facilities.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-320; Filed December 2, 1993, 2:50 p.m.

REAL ESTATE BOARD

Title of Regulation: **VR 585-01-0. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 585-01-0:1. Public Participation Guidelines.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, my final approval will be contingent upon review of the public's comments.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-318; Filed December 2, 1993, 2:51 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-45-5. Investigation of Child Abuse and Neglect In Out of Family Complaints .**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: December 8, 1993

VA.R. Doc. No. R94-348; Filed December 13, 1993, 10:30 a.m.

DEPARTMENT OF STATE POLICE

Title of Regulation: **VR 545-00-01. Public Participation Policy.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-322; Filed December 2, 1993, 2:50 p.m.

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Title of Regulation: **VR 545-01-07. Motor Vehicle Safety Inspection Rules and Regulations.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-326; Filed December 2, 1993, 2:49 p.m.

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Title of Regulation: **VR 545-01-13. Regulations Relating to the Standards and Specifications for Regrooved or Regroovable Tires.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-328; Filed December 2, 1993, 2:49 p.m.

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Title of Regulation: **VR 545-01-14. Regulations Relating to Standards and Specifications for Warning Stickers or Decals for All-Terrain Vehicles.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-325; Filed December 2, 1993, 2:49 p.m.

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Title of Regulation: **VR 545-01-15. Regulations Relating to Standards and Specifications for Back-up Audible Alarm Signals.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-324; Filed December 2, 1993, 2:49 p.m.

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Title of Regulation: **VR 545-01-16. Regulations Relating to Standards and Specifications for Overdimensional Warning Lights.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-327; Filed December 2, 1993, 2:49 p.m.

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Title of Regulation: **VR 545-01-17. Regulations Relating to Standards and Specifications for Safety Lights for Farm Tractors in Excess of 108 Inches in Width.**

Governor's Comment:

I do not object to the initial draft of these regulations. However, I reserve the right to comment on the final package, including any changes made as a result of public hearings and comments, before promulgation.

/s/ Lawrence Douglas Wilder
Governor
Date: November 30, 1993

VA.R. Doc. No. R94-323; Filed December 2, 1993, 2:49 p.m.

Symbol Key †
† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

Application for Federal Funds

In accord with the Anti-Drug Abuse Act of 1988 (Public Law 100-690, Title VI, Subtitle C), the Department of Criminal Justice Services announces its intention to submit an application for federal funds to the Bureau of Justice Assistance, U. S. Department of Justice.

The application will be submitted not later than December 27, 1993, and will request $8,500,000, which is Virginia's allocation for federal fiscal 1994 under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program.

The Department of Criminal Justice Services will use these funds to make grants to localities and state agencies to support drug control and criminal justice system improvement projects.

In addition to the Standard Form 424, "Application For Federal Assistance," the application to be submitted to the Bureau of Justice Assistance contains a discussion of the state's drug and violent crime problems, identifies needs and priorities, and indicates ways the department proposes to use the federal funds to address the needs and priorities.

Public review of the application and comment on it are invited. Single copies may be obtained by contacting Gary Goff, Department of Criminal Justice Services, 805 East Broad Street, Richmond, VA 23219, telephone (804) 371-6507.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Designation Of Regional Solid Waste Management Planning Area

In accordance with the provision of § 10.1-1411 of the Code of Virginia, and Part V of Regulations for the Development of Solid Waste Management Plans, VR 672-50-01, the Director of the Waste Division of the Department of Environmental Quality intends to designate a solid waste management region of that part of the Cumberland Plateau Planning District consisting of Buchanan County and the Town of Grundy; Dickenson County and the Towns of Clintwood, Clinchco, and Haysi; and Russell County and the Towns of Cleveland, Castlewood, Honaker, and Lebanon. A petition has been received by the Department of Environmental Quality for the designation on behalf of the local governments.

The director has approved a comprehensive solid waste management plan for this area. The Cumberland Plateau Regional Waste Management Authority is the implementing authority for the plan and the programs for the recycling of solid waste generated within the region.

Anyone wishing to comment on the designation of this region should respond in writing by 5 p.m. on December 31, 1993, to Ms. Anne M. Field, Department of Environmental Quality, 629 East Main Street, P. O. Box 10009, Richmond, Virginia, 23240-0009, Fax: 804/762-4346. Questions concerning this notice should be directed to Ms. Field at (804) 762-4365.

Following the closing date for comments, the Director of the Waste Division will notify the affected local governments of his designation of the regional boundaries or of the need to hold a public hearing on the designation.

VIRGINIA CODE COMMISSION

† NOTICE OF INTENT TO AWARD CONTRACT FOR THE PUBLICATION OF THE VIRGINIA ADMINISTRATIVE CODE

Notice is hereby given to the public that the Virginia Code Commission, on behalf of the Commonwealth of Virginia, intends to enter into a contract with Lawyers Cooperative Publishing Company, a division of Thomson Professional Publishing, Inc., a New York corporation, for the preparation, publication and distribution of the Virginia Administrative Code (VAC). The VAC will contain the regulations of agencies of the Commonwealth which are subject to the Virginia Register Act.

Additional information is available through the Office of the Registrar of Regulations, 2nd Floor, General Assembly Building, Richmond, Virginia 23219.

NOTICE TO STATE AGENCIES

Mailing Address: Our 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 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.

CALENDAR OF EVENTS

Symbols Key
† Indicates entries since last publication of the Virginia Register
♿ Location accessible to handicapped
☎ Telecommunications Device for Deaf (TDD)/Voice Designation

NOTICE

Only those meetings which are filed with the Registrar of Regulations by the filing deadline noted at the beginning of this publication are listed. Since some meetings are called on short notice, please be aware that this listing of meetings may be incomplete. Also, all meetings are subject to cancellation and the Virginia Register deadline may preclude a notice of such cancellation.

For additional information on open meetings and public hearings held by the Standing Committees of the Legislature during the interim, please call Legislative Information at (804) 786-6530.

VIRGINIA CODE COMMISSION

EXECUTIVE

BOARD FOR ACCOUNTANCY

January 15, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Accountancy intends to **repeal** regulations entitled: **VR 105-01-1. Public Participation Guidelines,** and **adopt** regulations entitled: **VR 105-01-1:1. Public Participation Guidelines.** The proposed guidelines will set procedures for the Board for Accountancy to follow to inform and incorporate public participation when promulgating regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (STATE BOARD OF)

January 18, 1994 – Written comments may be submitted until 9 a.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to **repeal** regulations entitled: **VR 115-01-01. Guidelines for Public Participation,** and **adopt** regulations entitled **VR 115-01-01:1. Public Participation Guidelines.** Public Participation Guidelines are regulations, mandated by § 9-6.14:7.1 of the Code of Virginia, that govern how the agency will involve the public in the making of the regulations. The purpose of the proposed regulation is to review for effectiveness and continued need an emergency regulation that will be in effect only through June 10, 1994. The proposed regulation is for the purpose of providing a permanent regulation to supersede the emergency regulation.

The proposed regulation governs regulation-making entities under the aegis of the Department of Agriculture and Consumer Services (with the exception of the Pesticide Control Board, which has adopted its own public participation guidelines), and the Virginia Agricultural Development Authority.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Contact: L. H. Redford, Regulatory Coordinator, 1100 Bank Street, P.O. Box 1163, Richmond, VA 23209-1163, telephone (804) 786-3539.

Pesticide Control Board

January 13, 1994 - 10 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Board Room 204, 1100 Bank Street, Richmond, Virginia. ♿

Pesticide Control Board Committee meetings, specifically, Fees and Licenses Committee will discuss proposed fee regulation at 10:15 a.m. in Room 401.

January 14, 1994 - 9 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Board Room 204, 1100 Bank Street, Richmond, Virginia. ♿

A public hearing will be followed by a general business meeting to discuss proposed fee regulation and possible legislative proposals to the Code of Virginia. 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 following the public hearing. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made for any

appropriate accommodation.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P. O. Box 1163, Room 401, 1100 Bank Street, Richmond, VA 23209, telephone (804) 371-6558.

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CORRECTION TO PUBLIC HEARING DATE:
January 14, 1994 - 9 a.m. – Public Hearing
Department of Agriculture and Consumer Services, 1100 Bank Street, Room 204, Richmond, Virginia.

EXTENSION OF PUBLIC COMMENT PERIOD:
January 31, 1994 – 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 Pesticide Control Board intends to amend regulations entitled: **VR 115-04-21. Public Participation Guidelines.** The purpose of the proposed action is to review regulations for effectiveness and continued need to include allowing the public to request the use of an "advisor" and to ensure that the public may request changes to these regulations and receive consideration and response from the board. Also, provisions by which the board will appoint the "advisor" are established.

Statutory Authority: § 9-6.14:7.1 of the Code of Virginia.

Contact: Marvin A. Lawson, Ph.D., Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, 1100 Bank St., P.O. Box 1163, Room 401, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Winegrowers Advisory Board

January 12, 1994 - 10 a.m. – Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 2nd Floor Conference Room, 1100 Bank Street, Richmond, Virginia. 🖻

A regular meeting. Any person who needs any accommodation in order to participate at the meeting should contact Wendy Rizzo, identified in this notice, at least 14 days before the meeting date so that suitable arrangements can be made for any appropriate accommodation.

Contact: Wendy Rizzo, Secretary, Virginia Winegrowers Advisory Board, 1100 Bank Street, Room 1010, Richmond, VA 23219, telephone (804) 371-7685.

STATE AIR POLLUTION CONTROL BOARD

January 17, 1994 – 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 State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision HH – Standards of Performance for Regulated Medical Waste Incinerators, Rule 5-6).** The regulation amendments concern provisions covering standards of performance for regulated medical waste incinerators. The proposal will require owners of regulated medical waste incinerators to limit emissions of dioxins/furans, particulate matter, carbon monoxide, and hydrogen chloride to a specified level necessary to protect public health and welfare. This will be accomplished through the establishment of emissions limits and process parameters based on control technology, ambient limits to address health impacts, and monitoring, testing, and recordkeeping to assure compliance with the limits.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until the close of business January 17, 1994, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, Virginia 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Contact: Karen Sabasteanski, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10089, Richmond, VA 23240, telephone (804) 786-1624.

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January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

January 31, 1994 – 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 and the requirements of § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to amend regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision NN – Appendix E, Public Participation Guidelines).** The regulation amendments revise the public participation procedures to: (i) change and expand the information provided in the notice of intended regulatory action and notice of public comment; (ii) clarify the types of meetings and hearings to be held; (iii) set out and specify the methods and policy for gaining public input and participation in the regulatory adoption process; (iv) and update other provisions to be consistent with the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7-1 and 10.1-1308 of the Code

of Virginia.

Written comments may be submitted until close of business January 31, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Contact: Robert Mann, Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4419.

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† **February 1, 1994 - 7 p.m.** – Information Session
† **February 1, 1994 - 8 p.m.** – Public Hearing
City Council Chamber, Stryker Building, 412 N. Boundary Street Williamsburg, Virginia.

† **February 3, 1994 - 7 p.m.** – Information Session
† **February 3, 1994 - 8 p.m.** – Public Hearing
City Council Chamber, City Hall Building, 9027 Center Street, Manassas, Virginia.

† **February 8, 1994 - 7 p.m.** – Information Session
† **February 8, 1994 - 8 p.m.** – Public Hearing
Virginia Department of Transportation, District Office Assembly Room, 4219 Campbell Avenue, Lynchburg, Virginia.

† **February 9, 1994 - 7 p.m.** – Information Session
† **February 9, 1994 - 8 p.m.** – Public Hearing
Virginia Western Community College Learning Center, 3095 Colonial Avenue, S.W. Roanoke, Virginia.

† **February 10, 1994 - 7 p.m.** – Information Session
† **February 10, 1994 - 8 p.m.** – Public Hearing
Virginia Highlands Community College, Room 220, State Route 372 and Route 140 at Exit 14 off I-81, Abingdon, Virginia.

† **February 25, 1994** – Written comments may be submitted until close of business on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision JJ – Federal Operating Permits for Stationary Sources).** The proposed regulation establishes an operating permit program that has as its goal the issuance of comprehensive permits which will specify for the permit holder, the department and the public all applicable state and federal requirements for pertinent emissions units in the facility covered. The result should be a permit that clearly states the air program requirements for the permit holder and provides a mechanism for the department to use in enforcing the regulations.

Comparison with federal requirements: With respect to the duration of a permit, Title V of the Act provides for several time periods. The basic provisions of the Act provide that permits for most sources are to be issued for a term not less than three years nor more than five years. Exceptions to the basic provisions are made for incinerators subject to federal regulations and sources of acid rain producing pollutants (mostly large electrical utilities). For the acid rain permits, the term must be for five years. For the incinerators, the permit term must not exceed 12 years; however, the permits must be reviewed every five years. The proposed regulation sets the permit term at five years for all sources. This was done to provide consistency and simplicity to the program, as well as equity of requirements for all source types.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period: Department of Environmental Quality Abingdon Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park, Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (804) 323-2409; Department of Environmental Quality, Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Written comments may be submitted until close of business February 25, 1994, to Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240. The purpose of this

notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Contact: Nancy Saylor, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia 23240, telephone (804) 762-4421.

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† **February 1, 1994 - 7 p.m.** – Information Session
† **February 1, 1994 - 8 p.m.** – Public Hearing
City Council Chamber, Stryker Building, 412 N. Boundary Street, Williamsburg, Virginia.

† **February 3, 1994 - 7 p.m.** – Information Session
† **February 3, 1994 - 8 p.m.** – Public Hearing
City Council Chamber, City Hall Building, 9027 Center Street, Manassas, Virginia.

† **February 8, 1994 - 7 p.m.** – Information Session
† **February 8, 1994 - 8 p.m.** – Public Hearing
Virginia Department of Transportation, District Office Assembly Room, 4219 Campbell Avenue, Lynchburg, Virginia.

† **February 9, 1994 - 7 p.m.** – Information Session
† **February 9, 1994 - 8 p.m.** – Public Hearing
Virginia Western Community College Learning Center, 3095 Colonial Avenue, S.W., Roanoke, Virginia.

† **February 10, 1994 - 7 p.m.** – Information Session
† **February 10, 1994 - 8 p.m.** – Public Hearing
Virginia Highlands Community College, Room 220, State Route 372 and Route 140 at Exit 14 off I-81, Abingdon, Virginia.

Written comments may be submitted until close of business February 24, 1994.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia and § 110(a)(1) of the Federal Clean Air Act that the State Air Pollution Control Board intends to adopt regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution (Revision KK – Permit Program Fees for Stationary Sources).** The regulation requires owners of stationary sources of air pollution (with some exceptions) to pay annual emission fees in order to generate revenue sufficient to cover all reasonable direct and indirect costs of the permit program and prescribes the timetable and method for assessment and collection.

Comparison with federal requirements: The regulation exceeds the federal mandates for stringency in two provisions. The first provision is in the inclusion of small sources in the list of sources subject to fees. By issuing state operating permits to small sources, the department can help them escape the burden of the Title V permit requirements by limiting their potential to emit. The fees paid by the small sources will defray the cost of issuing these permits. The second provision is in the collection of fees prior to EPA's approval of the program. The operating permit regulation provides for applications to be submitted to the department between September 15 and November 15, 1994. In order to begin processing these applications upon EPA's approval, the department must hire and train additional staff to be in place by that time. The early collection of fees will allow for the timely hiring of the additional staff.

Location of proposal: The proposal, an analysis conducted by the department (including a statement of purpose, a statement of estimated impact of the proposed regulation, an explanation of need for the proposed regulation, an estimate of the impact of the proposed regulation upon small businesses, and a discussion of alternative approaches) and any other supporting documents may be examined by the public at the department's Air Programs Section (Eighth Floor, 629 East Main Street, Richmond, Virginia) and at any of the department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period. Department of Environmental Quality, Abingdon Virginia Air Regional Office, 121 Russell Road, Abingdon, Virginia 24210, telephone (703) 676-5482; Department of Environmental Quality, Roanoke Air Regional Office, Executive Office Park Suite D, 5338 Peters Creek Road, Roanoke, Virginia 24019, telephone (703) 561-7000; Department of Environmental Quality, Lynchburg Air Regional Office, 7701-03 Timberlake Road, Lynchburg, Virginia 24502, telephone (804) 582-5120; Department of Environmental Quality, Fredericksburg Air Regional Office, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, telephone (703) 899-4600; Department of Environmental Quality, Richmond Air Regional Office, Arboretum V, Suite 250, 9210 Arboretum Parkway, Richmond, Virginia 23236, telephone (804) 323-2409; Department of Environmental Quality, Hampton Roads Air Regional Office, Old Greenbrier Village, Suite A, 2010 Old Greenbrier Road, Chesapeake, Virginia 23320-2168, telephone (804) 424-6707; Department of Environmental Quality, Northern Virginia Air Regional Office, Springfield Corporate Center, Suite 310, 6225 Brandon Avenue, Springfield, Virginia 22150, telephone (703) 644-0311.

Statutory Authority: §§ 10.1-1308 and 10.1-1322 of the Code of Virginia.

Written comments may be submitted until close of business February 25, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240. The purpose of this notice is to provide the public with the opportunity to comment on the proposed regulation and the costs and benefits of the proposal.

Contact: Dr. Kathleen Sands, Policy Analyst, Air Programs Section, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

February 23, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to **repeal** regulations entitled: **VR 130-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 130-01-01:1. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing public participation guidelines and promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure, certification and registration of architects, professional engineers, land surveyors, landscape architects and interior designers in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201, and 54.1-404 of the Code of Virginia.

Contact: Willie Fobbs, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

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January 29, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects intends to amend regulations entitled: **VR 130-01-2. Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects Rules and Regulations.** The purpose of the proposed amendments is to adjust fees contained in current regulation, establish registration requirements for limited liability companies, and revise minimum standards for property surveys.

Statutory Authority: §§ 54.1-113 and 54.1-404 of the Code of Virginia.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

ASAP POLICY BOARD - VALLEY

† **January 10, 1994 - 8:30 a.m.** – Open Meeting
Augusta County School Board Office, Fisherville, Virginia.
♿

A meeting of the local policy board which conducts business pertaining to (i) court referrals; (ii) financial report; (iii) director's report; (iv) statistical reports.

Contact: Rhoda G. York, Executive Director, Valley ASAP Board, Holiday Court, Suite B, Staunton, VA 24401, telephone (703) 886-5616 or (703) 943-4405.

VIRGINIA ASBESTOS LICENSING BOARD

January 14, 1994 - 10 a.m. – Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Conference Room 4, Richmond, Virginia.

February 18, 1994 – 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 Asbestos Licensing Board intends to **repeal** regulations entitled: **VR 190-05-01. Asbestos Licensing Regulations** and **adopt** regulations entitled: **VR 137-01-02. Asbestos Licensing Regulations.** The asbestos regulations have been revised to implement the acts of the 1993 General Assembly.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8595.

AUCTIONEERS BOARD

January 15, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Auctioneers intends to **repeal** regulations entitled: **VR 150-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 150-01-1:1. Public Participation Guidelines.** The purpose of the proposed regulatory action is to promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of auctioneers in Virginia.

Statutory Authority: §§ 9-6.14:7.1, 54.1-602 and 54.1-201 of

the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

† **February 25, 1994** – 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 Audiology and Speech-Language Pathology intends to adopt regulations entitled: **VR 115-01-3. Regulations Governing Public Participation Guidelines.** The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2602 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Audiology and Speech-Language Pathology, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9111.

BOARD FOR BARBERS

January 15, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Barbers intends to **repeal** regulations entitled: **VR 170-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 170-01-00:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Board for Barbers to follow to inform and incorporate public participation when promulgating regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

BOARD FOR BRANCH PILOTS

February 23, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Branch Pilots intends to **repeal** regulations entitled: **VR 535-01-00. Public Participation Guidelines** and **adopt** regulations entitled: **VR 535-01-00:1. Public Participation Guidelines.** The purpose of the proposed action is to repeal existing public participation guidelines and promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of branch pilots in Virginia. The proposed regulation will replace the emergency regulations governing the public process.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-902 of the Code of Virginia.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

January 31, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Chesapeake Bay Local Assistance Board intends to amend regulations entitled: **VR 173-01-00:1. Public Participation Guidelines.** The purpose of the proposed amendments is to ensure interested persons information necessary for meaningful, timely input throughout the regulatory process.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2103 of the Code of Virginia.

Contact: C. Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Rm. 701, Richmond, Va 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

† **January 13, 1994 - 10:30 a.m.** – Open Meeting
Culpeper Building, 1606 Santa Rosa Road, Suite 135, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **January 13, 1994 - 2 p.m.** – Open Meeting
Roslyn Conference Center, Gibson Hall, 8727 River Roac

Richmond, Virginia. ⊡ (Interpreter for the deaf provided upon request)

† **January 14, 1994 - 9 a.m.** – Open Meeting
Roslyn Conference Center, Gibson Hall, 8727 River Road, Richmond, Virginia. ⊡ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues, concerns and programs that impact child day centers, camps, school age programs, and preschool/nursery schools. The public comment period will be 2 p.m. Please call ahead of time for possible changes in meeting time. Contingent snow date is January 21, 1994. On January 13, 1994, from 10:30 a.m. - 2 p.m. is new member orientation session.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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February 13, 1994 – 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 Child Day-Care Council intends to repeal regulations entitled: **VR 175-01-01. Public Participation Guidelines.** The existing Public Participation Guidelines are being repealed so new guidelines can be promulgated. Oral comments will be accepted at 10 a.m. at the council's regular meeting.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until February 13, 1994, to Peg Spangenthal, Child Day-Care Council, 730 East Broad Street, 7th Floor, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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February 13, 1994 – 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 Child Day-Care Council intends to adopt regulations entitled: **VR 175-01-01:1. Public Participation Guidelines.** This regulation explains how the council will obtain public input when developing regulations. This regulation will replace the emergency public participation guidelines effective 7/1/93 to 7/1/94. Oral comments will be accepted at 10 a.m. at the council's regular meeting.

Statutory Authority: §§ 9-6.14:7.1, 63.1-202 and 63.1-202.1 of the Code of Virginia.

Written comments may be submitted until February 13, 1994, to Peg Spangenthal, Child Day-Care Council, 730 East Broad Street, 7th Floor, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Office of Governmental Affairs, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

COMPREHENSIVE SERVICES PREVENTION AND EARLY INTERVENTION STEERING COMMITTEE

† **January 7, 1994 - 10 a.m.** – Open Meeting
† **January 21, 1994 - 10 a.m.** – Open Meeting
Virginia Housing Development Authority Conference Room, 601 S. Belvidere Street, Richmond, Virginia. FT3001 5

The Steering Committee is working at the direction of the State Executive Council to develop recommendations for the organization and development of a comprehensive system of prevention and early intervention services directed at the needs of children and families throughout the state. The Steering Committee is comprised of about 40 members representing citizen, private and public interests.

Contact: Eloise J. Cobb, PH.D., Comprehensive Services Prevention and Early Intervention Project Coordinator, Department of Health, Main Street Station, Suite 135, Richmond, VA 23218, telephone (804) 371-8838.

DEPARTMENT OF CONSERVATION AND RECREATION

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Conservation and Recreation intends to amend regulations entitled: **VR 217-00-00. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-104 of the Code of Virginia authorizes the Department of Conservation and Recreation (department) to prescribe rules and regulations

necessary and incidental to the performance of duties or execution of powers conferred by law; and to promulgate regulations pursuant to the Administrative Process Act to carry out the provisions of Subtitle I of Title 10.1 of the Code of Virginia.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-104 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

Board of Conservation and Recreation

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

January 31, 1994 – 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 Conservation and Recreation intends to amend regulations entitled: **VR 215-00-00. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-107 of the Code of Virginia authorizes the Board of Conservation and Recreation (board) to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1, (§ 10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be

sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-107 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

Soil and Water Conservation Board

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook, Glen Allen, Virginia.

January 31, 1994 – 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 Soil and Water Conservation Board intends to amend regulations entitled: **VR 625-00-00:1. Regulatory Public Participation Procedures.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-502 of the Code of Virginia authorizes the Virginia Soil and Water Conservation Board (board) to promulgate regulations necessary for the execution of Chapter 5 (§ 10.1-603 et seq.) of Title 10.1 of the Code of Virginia. This authorization covers the Erosion and Sediment Control Law and its attendant regulations. Section 10.1-603.18 of the Code of Virginia authorizes the board to promulgate regulations for the proper administration of the Flood Prevention and Protection Assistance Fund which is to include but not be limited to the establishment of amounts, interest rates, repayment terms, consideration of the financial stability of the particular local public body applying and all other criteria for awarding of grants or loans under the Flood Prevention and Protection Assistance Fund Act (§ 10.1-603.16 et seq.). The Dam Safety Act under § 10.1-605 of the Code of Virginia requires the board to promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated (§ 10.1-604 et seq.). The Conservation, Small Watersheds Flood Control and Area Development Fund Act (§ 10.1-636 et seq.) authorizes the board to establish guidelines for the proper administration of the fund and provisions of Article 4.

This action is necessary to replace existing emergency Regulatory Public Participation Procedures with permanent regulations which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon the receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the Director of the Department of Conservation and Recreation should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1, 10.1-502, 10.1-603.18, 10.1-605, and 10.1-637 of the Code of Virginia.

Contact: Leon E. App, Executive Assistant, Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-4570.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† **January 12, 1994 - 10 a.m.** – Open Meeting
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia. FT3001 5

A meeting to discuss matters as may be presented.

Contact: Vivian Toler, Secretary to the Board, Board of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

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January 12, 1994 - 10 a.m. – Public Hearing
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia.

January 17, 1994 – 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 State Board of Corrections intends to amend regulations entitled: **VR 230-30-001. Public Participation Guidelines.** The purpose of the proposed regulations is to outline how the Board of Corrections plans to ensure public participation in the formation and development of regulations as required in the Administrative Process Act.

Statutory Authority: §§ 9-6.14:7.1 and 53.1-5 of the Code of Virginia.

Contact: Amy Miller, Agency Regulatory Coordinator, Department of Corrections, P.O. Box 26963, Richmond, VA 23261, telephone (804) 674-3262.

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January 17, 1994 – 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 State Board of Corrections intends to repeal regulations entitled: **VR 230-30-005. Guide for Minimum Standards in Planning, Design and Construction of Jail Facilities.** The Board of Corrections is repealing this regulation; however, the board is including the provisions of this regulation in VR 230-30-005:1, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Contact: Mike Howerton, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23251, telephone (804) 674-3251.

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January 17, 1994 – 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 State Board of Corrections intends to adopt regulations entitled: **VR 230-30-005:1. Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed regulation is to fulfill the Board of Corrections' obligation to establish minimum standards for the construction, equipment, administration and operation of local correctional facilities, along with regulations establishing criteria to assess need, establish priorities, and evaluate requests for reimbursement of construction costs to ensure fair and equitable distribution of state funds provided. These regulations will supersede VR 230-30-008, Regulations for State Reimbursement of Local Correctional Facility Construction Costs, and VR 230-30-005, Guide for Minimum Standards in Planning, Design and Construction of Jail Facilities.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Contact: Mike Howerton, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23251, telephone (804) 674-3251.

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January 17, 1994 – 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 State Board of Corrections intends to repeal regulations entitled: **VR 230-30-008. Regulations for State Reimbursement of Local Correctional Facility Construction Costs.** The Board of Corrections is repealing this regulation; however, the board is including the provisions of this regulation in VR 230-30-005:1, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.

Statutory Authority: §§ 53.1-5, 53.1-68 and 53.1-80 through 53.1-82.3 of the Code of Virginia.

Contact: Mike Howerton, Chief of Operations, Department of Corrections, P.O. Box 26963, Richmond, VA 23251, telephone (804) 674-3251.

Liaison Committee

† **January 13, 1994 - 9:30 a.m.** – Open Meeting
Board of Corrections, 6900 Atmore Drive, Richmond, Virginia. [5]

A meeting to discuss criminal justice matters.

Contact: Vivian Toler, Secretary to the Board, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3235.

BOARD FOR COSMETOLOGY

January 10, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Board for Cosmetology, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-8509.

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February 10, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Cosmetology intends to **repeal** regulations entitled: **VR 235-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 235-01-01:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Board for Cosmetology to follow to inform and incorporate public participation when promulgating Cosmetology regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1202 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8509.

CRIMINAL JUSTICE SERVICES BOARD

† **April 6, 1994 - 9 a.m.** – Public Hearing
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

March 1, 1994 – 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 Criminal Justice Services Board intends to adopt regulations entitled: **VR 240-03-2. Regulations Relating to Private Security Services.** This regulation sets forth and establishes the private security services regulatory program for the Commonwealth of Virginia.

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

Written comments may be submitted until March 1, 1994, to L.T. Eckenrode, Department of Criminal Justice Services, P. O. Box 10110, Richmond, VA 23240-9998.

Contact: Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

DEPARTMENT OF EDUCATION (STATE BOARD OF)

January 19, 1994 - 7 p.m. – Public Hearing
Snow date: January 25, 1994
Kenmore Middle School, 200 South Carlin Springs Road, Arlington, Virginia.

January 20, 1994 - 7 p.m. – Public Hearing
Snow date: January 27, 1994
Hermitage High School, 8301 Hungary Spring Road, Richmond, Virginia

January 29, 1994 – 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 State Board of Education intends to adopt regulations entitled: **VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.** The purpose of the proposed regulations is to include provisions for contractual agreements and hiring procedures. The regulations provide an overview of the contracting process for local school boards and their professional employees, definitions of relevant contract terms, and descriptions of essential contract elements are included within the appendix of the regulations. The regulations describe the employment of professional personnel as a process that rests with the local school board and the employee and sets forth the prototypes and contract elements as resources that local boards may use at their discretion in meeting the requirements of the employment process.

The proposed regulations are new regulations that are intended to replace VR 270-01-0042, which will be repealed. The proposed regulations reflect substantial changes over the previous section on contractual agreements. For the first time, all relevant terms are being described and an entirely new section on the uniform hiring of teachers is presented.

The specific provisions of the proposed regulations are in two parts and begin with a preamble describing who the parties are and that the hiring discretion is with the local school board. Part I includes (i) definitions of terms, including types of contracts and the personnel involved, (ii) the contract period and the form of the contract including sample prototypes of each type of contract and a listing of essential contract terms, (iii) the specific provisions of the annual contract, (iv) the specific provisions of the continuing contract, and (v) the specific provisions of the coaching contract. Part II includes (i) a discussion of the purpose of a uniform hiring process, and (ii) a three-phase hiring process with detailed descriptions of the benefits and requirements of each phase. The three-phase process establishes a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates establish minimum timeframes to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of a locality, and offer professional mobility for teachers.

Statutory Authority: §§ 22.1-16, 22.1-302, and 22.1-304 of the Code of Virginia.

Contact: Brenda F. Briggs or Charles W. Finley, Associate Specialists, Compliance Division, Department of Education, P. O. Box 2120, Richmond, VA, telephone (804) 225-2750, (804) 225-2747 or toll-free 1-800-292-3820.

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January 27, 1994 - 8 a.m. – Public Hearing
James Monroe Building, 101 N. 14th Street, Richmond, Virginia.

February 13, 1994 – 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 State Board of Education intends to amend regulations entitled: **VR 270-01-0006. Regulations Governing Pupil Transportation including Minimum Standards for School Buses In Virginia.** The purpose of the proposed amendments is to address revisions to federal and state statutes and federal regulations. These regulations are divided into seven major parts: Definitions, General Regulations, Distribution of Pupil Transportation Funds, Requirements for School Bus Drivers, Minimum Standards for School Buses in Virginia (the bus chassis and the bus body), Standards for Lift Gate Buses, and Activity Buses. The proposed revisions provide amendments to reflect automation of accident reporting; changes in distribution of pupil transportation funds; changes in driver requirements to address the Americans with Disabilities Act, testing for alcohol and controlled substances, and driver training; technological advances in design of school bus chassis and school bus body and to conform to federal motor vehicle safety standards; new standards regarding transporting children with special needs to include infants and toddlers; and changes in regulations regarding use of school activity vehicles.

Statutory Authority: Article VIII, § 4 of the Constitution of Virginia; §§ 22.1-16, 22.1-176, 22.1-177, and 22.1-178 of the Code of Virginia.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2025.

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January 27, 1994 - 9 a.m. – Public Hearing
James Monroe Building, Conference Room B, 101 N. 14th Street, Richmond, Virginia.

February 13, 1994 – 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 State Board of Education intends to adopt regulations entitled: **VR 270-01-0059. Regulations for the School Breakfast Program.** Section 22.1-207.3 of the Code of Virginia requires that any public school that has 25% or more of its students eligible for free and reduced price meals provide the federally funded School Breakfast Program or like program. The law also requires the Department of Education to promulgate regulations governing the implementation of a breakfast program and to establish reporting requirements. The Child Nutrition Act of 1966 and succeeding amendments provide for a school breakfast program in any school agreeing to participate and to meet federal requirements. This is a federally funded entitlement program; reimbursement will be paid for all breakfasts served that meet federal requirements.

All schools are eligible to participate in the federally funded School Breakfast Program provided under the Child Nutrition Act of 1966 and succeeding amendments. The purpose is to provide students, who otherwise may not eat, the opportunity to eat breakfast before the school day begins. Consumption of breakfast enhances the health, well-being, educational experiences and performance of students. Federal funds will reimburse school divisions, according to students' meal benefit categories, for all breakfasts served that meet federal requirements. The State Board of Education reserves the right to waive the requirement of a breakfast program after a school has met specified procedures. With the implementation of the federally funded School Breakfast Program increased federal funds will be received by localities and more children will have access to a breakfast meal.

Statutory Authority: § 22.1-207.3 of the Code of Virginia.

Contact: Jane R. Logan, Principal Specialist, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120.

January 27, 1994 - 8:30 a.m. – Open Meeting
February 24, 1994 - 8:30 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold a regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: Dr. Ernest W. Martin, Assistant Superintendent, Department of Education, P. O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2073 or toll-free 1-800-292-3820.

STATE EDUCATION ASSISTANCE AUTHORITY

† **February 25, 1994** – 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 State Education Assistance Authority intends to amend regulations entitled: **VR 275-00-1. Public Participation Guidelines.** The amendments address methods for the identification and notification of interested parties.

Statutory Authority: §§ 9-6.14:7.1 and 23-38.33:1(C)(7) of the Code of Virginia.

Written comments may be submitted through February 25, 1994, to Marvin Ragland, Virginia Student Assistance Authorities, 411 E. Franklin Street, Richmond, VA 23219.

Contact: Sherry A. Scott, Policy Analyst, State Education Assistance Authority, 411 E. Franklin Street, Richmond, VA 23219, telephone (804) 775-4071, or toll-free 1-800-792-5626.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD COUNTY

January 6, 1994 - 5:30 p.m. – Open Meeting
Chesterfield County Administration Building, 10001 Ironbridge Road, Room 502, Chesterfield, Virginia. ♿

A meeting to meet requirements of Superfund Amendment and Reauthorization Act of 1986.

Contact: Lynda G. Furr, Assistant Emergency Services Coordinator, Chesterfield Fire Department, P.O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

DEPARTMENT OF ENVIRONMENTAL QUALITY

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Innsbrook Office, 4900 Cox Road, Glen Allen, Virginia.

January 31, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Environmental Quality intends to adopt regulations entitled: **VR 304-01-01. Public Participation Guidelines.** The purpose of the proposed regulation is to replace existing emergency public participation guidelines with permanent guidelines in compliance with the Administrative Process Act. Department of Environmental Quality has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact Cindy Berndt at the Department of Environmental Quality, Office of Regulatory Service, P. O. Box 11143, Richmond, Virginia 23230. The meeting is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Office of Regulatory Service, P. O. Box 11143, Richmond, VA 23230, (804) 527-5162 or (804) 527-4261/TDD. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 27, 1993.

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

Written comments may be submitted until 4 p.m. on January 3, 1994, to Ms. Doneva Dalton, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230.

Contact: Cindy M. Berndt, Office of Regulatory Services, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

Technical Advisory Committee

† **January 4, 1994 - 10 a.m.** – Open Meeting
Department of Environmental Quality, Training Room, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

A meeting for the development of regulations on the management of coal combusion by-products. Other tentatively scheduled meetings are Tuesday, January 18, February 1, February 15, and March 1, 1994. Contact should be made prior to the meeting date so as to be informed of any changes in time of meeting, location or meeting cancellation.

Contact: Mike Murphy, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 762-4003.

Waste Tire End User Reimbursement Advisory Committee

January 12, 1994 - 10 a.m. – Open Meeting
Monroe Office Building, Conference Room C, 101 N. 14th Street, Richmond, Virginia. ♿

The meeting is the second meeting of the committee which is assisting DEQ in developing regulations for reimbursing users of waste tire material pursuant to §§ 10.1-1422 and 10.1-1422.3 of the Code of Virginia.

Contact: Allan Lassiter, Director, Waste Tire Program, Department of Environmental Quality, 629 E. Main Street, Richmond, VA 23219, telephone (804) 672-4215.

Work Group on Detection/Quantitation Levels

January 12, 1994 - 1:30 p.m. – Open Meeting
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Glen Allen, Virginia. ♿

The department has established a work group on detection/quantitation levels for pollutants in the

regulatory and enforcement programs. The work group will advise the Director of the Department of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for January 26, February 9, February 23, March 9, March 23, April 6, and April 20, 1994. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

Contact: Alan J. Anthony, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

BOARD OF FORESTRY

January 13, 1994 - 9:30 a.m. – Open Meeting
Marriott Hotel, 500 E. Broad Street, Richmond, Virginia

A general business meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P. O. Box 3758, Charlottesville, VA 22903-0858, telephone (804) 977-6555/TDD ☎

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

January 4, 1994 - 9:30 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ♿

A regularly scheduled board meeting.

Contact: Meredyth P. Partridge, Executive Director, Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

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† **February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Funeral Directors and Embalmers intends to adopt regulations entitled: **VR 320-01-5. Public Participation Guidelines.** The proposed regulations are intended to replace the emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400, and 54.1-2803 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-3307.

BOARD OF GAME AND INLAND FISHERIES

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Innsbrook Office, 4900 Cox Road, Glen Allen, Virginia.

February 11, 1994 – Written comments may be submitted until 5 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 that the Board of Game and Inland Fisheries intends to adopt regulations entitled: **VR 325-05-1. Public Participation Guidelines.** This proposed regulation sets forth the procedures to be followed by the Department of Game and Inland Fisheries for soliciting input from the public during all phases of the formation, development, promulgation, and final adoption of regulations not related to wildlife management, which have been exempted by the General Assembly from the public participation provisions of the Administrative Process Act. As such, they are the primary means for the public, regulated entities, environmental groups and other interested persons to provide meaningful input on the effects of a proposed action to their health, safety, or welfare, It also requires the agency to respond to citizen's comments.

Statutory Authority: §§ 9-6.14:7.1 and 29.1-103 of the Code of Virginia.

Contact: Mark D. Monson, Chief, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000.

BOARD FOR GEOLOGY

January 5, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Conference Room 3, Richmond, Virginia ♿

A general board meeting.

Contact: David E. Dick, Assistant Director, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595or (804) 367-9753/TDD ☎

HAZARDOUS MATERIALS TRAINING COMMITTEE

† **January 18, 1994 - 10 a.m.** – Open Meeting
Department of Emergency Services, Training Center, 308 Turner Road, Richmond, Virginia.

A meeting to discuss curriculum course development and review existing hazardous materials courses. Individuals with a disability, as defined in the Americans with Disabilities Act of 1990 (ADA) desiring to attend this meeting should contact VDE

10 days prior to the event so as to ensure appropriate accommodations are provided.

Contact: George B. Gotschalk, Jr., Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-8001.

DEPARTMENT OF HEALTH (STATE BOARD OF)

January 11, 1994 - 10 a.m. – Public Hearing
James Monroe Building, Room C, 101 N. 14th Street, Richmond, Virginia.

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to amend regulations entitled: **VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.** Sections 32.1-12 and 32.1-102.2 of the Code of Virginia provide the statutory basis for Virginia Medical Care Facilities Certificate of Public Need (COPN) regulations. The proposed regulations incorporate all of the amendments to the COPN law which were enacted by the 1993 Session of the Virginia General Assembly and became effective on July 1, 1993. In order to assure compliance with the amended COPN law, the Board of Health promulgated emergency COPN regulations on July 1, 1993, which are effective through June 30, 1994. The proposed COPN regulations will permanently incorporate all 1993 changes to the law which were implemented on an emergency basis. These regulations also propose modifications to the administrative review procedures and to the definition of a reviewable project which should improve the effectiveness of COPN regulation.

Statutory Authority: §§ 32.1-12 and 32.1-102.2 of the Code of Virginia.

Contact: Wendy V. Brown, Project Review Manager, Office of Resources Development, Department of Health, 1500 East Main Street, Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

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January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Health intends to repeal regulations entitled: **Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program.** These regulations are no longer necessary since the program was discontinued in FY 1988 when appropriations for the program ended. The program reimbursed eligible hospitals for services provided to certain high-risk pregnant women and newborns whose family incomes were below 100% of the federal poverty level. Services that were provided through the program are now available through Medicaid-reimbursed services as well as the Indigent Health Care Trust Fund which reimburses hospitals for uncompensated care.

Statutory Authority: § 32.1-12 of the Code of Virginia.

Contact: Rosanne Kolesar, Health Programs Analyst, Department of Health, 1500 E. Main St., Room 213, Richmond, VA 23219, telephone (804) 786-4891.

Commissioner's Waterworks Advisory Committee

† **January 20, 1994 - 9:30 a.m.** – Open Meeting
King's Korner Enterprises, Inc., 7511 Airfield Drive, Richmond, Virginia.

A general business meeting.

Contact: Thomas B. Gray, P.E., Special Projects Manager, 1500 E. Main Street, Room 109, Richmond, VA 23219, telephone (804) 786-5566.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

January 14, 1994 – Written comments may be submitted through this date.

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 370-01-000:1. Public Participation Guidelines.** The purpose of the proposed amendments is to allow for further identification and notification of interested parties as the council pursues the regulatory process. The guidelines set out a general policy for the use of standing or ad hoc advisory panels and consultation with the groups and individuals as the regulatory process is followed.

Statutory Authority: §§ 9-6.14:7.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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January 14, 1994 – Written comments may be submitted through this date.

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. Section 9-161.1 of the Code of Virginia requires that the Virginia Health Services Cost Review Council establish a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparison of the health care institution's performance to national and regional data. The amendments conform this regulation to the requirements of the new methodology.

Statutory Authority: §§ 9-160 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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January 14, 1994 – Written comments may be submitted through this date.

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 adopt regulations entitled: **VR 370-01-002. Regulations to Measure Efficiency and Productivity of Health Care Institutions.** This regulation establishes a new methodology for the review and measurement of efficiency and productivity of health care institutions. The methodology provides for, but is not limited to, comparisons of a health care institution's performance to national and regional data.

Statutory Authority: §§ 9-161.1 and 9-164 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

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January 14, 1994 – Written comments may be submitted through this date.

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 adopt regulations entitled: **VR 370-01-003. Virginia Health Services Cost Review Council Patient Level Data Base System.** This regulation (i) establishes the filing requirements of patient level data by hospitals regarding inpatient discharges; (ii) establishes the fees which must be complied with; (iii) establishes the various alternatives for the submission of the data; (iv) provides for confidentiality of certain filings; and (v) clarifies the type of nonprofit health data organization the executive director shall contract with to fulfill the requirements of the Patient Level Data Base System.

Statutory Authority: §§ 9-164 and 9-166.5 of the Code of Virginia.

Contact: John A. Rupp, Executive Director, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

CHANGE IN MEETING TIME
January 25, 1994 - 9:30 a.m. – Open Meeting
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia

A monthly meeting.

Contact: Kim B. Walker, Public Relations Coordinator, VHSCRC, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804)786-6371.

BOARD FOR HEARING AID SPECIALISTS

† **January 10, 1994 - 8:30 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia.

A meeting to (i) conduct examinations to eligible candidates; (ii) review enforcement files; (iii) conduct regulatory review; and (iv) consider other matters which may require board action.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

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January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to **repeal** regulations entitled: **VR 375-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 375-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to implement the requirements of the Administrative Process Act (APA) and the legislative changes to the APA made by the 1993 Virginia General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of hearing aid specialists in Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

CHANGE IN LOCATION AND MEETING TIME
January 11, 1994 - 9:30 a.m. – Open Meeting
Norfolk State University, Norfolk, Virginia.

A general business meeting. For more information, contact the council.

Contact: Anne Pratt, Associate Director, James Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2632.

DEPARTMENT OF HISTORIC RESOURCES

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Glen Allen, Virginia

January 31, 1994 - Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Historic Resources intends to amend regulations entitled: **VR 392-01-01. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation, and final adoption process. Furthermore, § 10.1-2202 of the Code of Virginia authorizes the Director of the Department of Historic Resources to adopt rules necessary for carrying out his powers and duties, including, at a minimum, criteria and procedures for nominating properties to the National Park Service for inclusion in the National Register of Historic Places.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the department's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2202 of the Code of Virginia.

Contact: Margaret T. Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

Board of Historic Resources

January 6, 1993 - 7 p.m. – Public Hearing
Department of Environmental Quality, Innsbrook, 4900 Cox Road, Glen Allen, Virginia.

January 31, 1994 – 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 Historic Resources intends to amend regulations entitled: **VR 390-01-01. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation, and final adoption process. Furthermore, § 10.1-2205 of the Code of Virginia authorizes the board to adopt rules necessary for carrying out its powers and duties, including, at a

minimum, criteria and procedures for designating historic landmarks and districts.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-2205 of the Code of Virginia.

Contact: Margaret T. Peters, Information Director, Department of Historic Resources, 221 Governor St., Richmond, VA 23219, telephone (804) 786-3143.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

† **January 7, 1994 - 9 a.m.** – Open Meeting
† **February 1, 1994 - 9 a.m.** – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. FT3001 5

Local Emergency Preparedness Committee Meeting on Emergency Preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

VIRGINIA INTERAGENCY COORDINATING COUNCIL EARLY INTERVENTION

January 18, 1994 - 9:30 a.m. – Open Meeting
Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Virginia Interagency Coordinating Council according to Part H early intervention program for disabled infants, toddlers and their families is meeting to advise and assist the Department of Mental Health, Mental Retardation and Substance Abuse Services as lead agency and the other state agencies involved in Part H in the implementation of the statewide early intervention program.

Contact: Michael Fehl, Director, Mentally Retarded Children and Youth Services, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3710.

DEPARTMENT OF LABOR AND INDUSTRY

† **January 10, 1994 - 7 p.m.** – Open Meeting
Roanoke County Old Administration Center, Community Room, 3738 Brambleton Avenue, Roanoke, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **January 12, 1994 - 7 p.m.** – Open Meeting
Manassas Campus, Northern Virginia Community College, 6901 Sudley Road, Manassas, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **January 13, 1994 - 7 p.m.** – Open Meeting
Norfolk Technical Center, 1330 North Military Highway, Norfolk, Virginia. ♿ (Interpreter for the deaf provided upon request)

The Administrative Process Act requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested persons when developing, revising, or repealing regulations. Legislation enacted by the 1993 General Assembly amended the APA by adding additional provisions to be included in agency Public Participation Guidelines. The current Public Participation Guidelines which were adopted in September, 1984, were amended by emergency action in June, 1993. New Public Participation Guidelines are proposed to replace the emergency guidelines which will expire June, 1994. This open meeting will provide an opportunity to answer questions and provi information on VR 425-01-100, Public Participati

Guidelines for the department; VR 425-02-101, Public Participation Guidelines for the Safety and Health Codes Board; and VR 425-01-102, Public Participation Guidelines for the Virginia Apprenticeship Council.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

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† **February 2, 1994 - 10 a.m.** – Public Hearing
Housing Development Authority, 601 S. Belvidere Street, Richmond, Virginia.

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Labor and Industry intends to adopt regulations entitled: **VR 425-01-100. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Department of Labor and Industry's Commissioner on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the commissioner June 24, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Department of Labor and Industry to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Department of Labor and Industry (department) set out procedures to be followed by the department which ensure that the public and all parties interested in regulations adopted by the commissioner have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the commissioner which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

Virginia Apprenticeship Council

† **January 27, 1994 - 7 p.m.** – Public Hearing
Richmond Technical Center, 2020 Westwood Avenue, Richmond, Virginia.

February 25, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Apprenticeship Council intends to adopt regulations entitled: **VR 425-01-102. Public Participation Guidelines.** Section 9-6.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the council June 28, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Apprenticeship Council to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Apprenticeship Council (council) set out procedures to be followed by the council and the Department of Labor and Industry which ensure that the public and all parties interested in regulations adopted by the council have a full and fair opportunity to participate at every stage. The regulation has been developed to

ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty-three (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, to solicit and use public comments and suggestions, to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch.

Statutory Authority: §§ 40.1-117 and 9-6.14:7.1 of the Code of Virginia.

Contact: Thomase E. Butler, Assistant Commissioner, Department of Labor and Industry, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2327.

Virginia Safety and Health Codes Board

† **February 2, 1994 - 1 p.m.** – Public Hearing
Housing Development Authority, Conference Room 1, 601 S. Belvidere Street, Richmond, Virginia.

February 25, 1994 – Written may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Safety Health Codes Board intends to adopt regulations entitled: **VR 425-02-101. Public Participation Guidelines.** Section 9-0.14:7.1 of the Code of Virginia requires each agency to develop, adopt and use Public Participation Guidelines for soliciting comments from interested parties when developing, revising, or repealing regulations. Agency is defined in the Administrative Process Act as "any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases." Legislation enacted by the 1993 General Assembly amended the Administrative Process Act (APA) by adding additional provisions to be included in agency Public Participation Guidelines.

Public Participation Guidelines were adopted by the Safety and Health Codes Board on September 19, 1984. Emergency Public Participation Guidelines which included the new requirements were adopted by the board June 21, 1993, and were effective June 30, 1993. The purpose of this action is to propose new Public Participation Guidelines for the Safety and Health Codes Board to replace the emergency guidelines which will expire June 29, 1994.

The Public Participation Guidelines of the Virginia Safety and Health Codes Board (board) set out procedures to be followed by the board and the Department of Industry and Labor which ensure that the public and all parties interested in regulations adopted by the board have a full and fair opportunity to participate at every stage in the development or revision of the regulations. The regulation has been developed to ensure compliance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and Executive Order Number Twenty -hree (90) (Revised).

The regulation sets forth processes to identify interested groups, to involve the public in the formulation of regulations, and to solicit and use public comments and suggestions. For regulations adopted by the board which are subject to the Administrative Process Act, the regulation sets forth procedures to issue Notices of Intended Regulatory Action, and to draft and adopt regulations. It also defines the role of advisory groups, the use of open meetings, and the review process by the Executive Branch. The regulation also provides a procedure to notify the public of proposed Federal Occupational Safety and Health regulatory action and encourages the public's participation in the formulation of these regulations at the federal level.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-22(5) of the Code of Virginia.

Contact: Bonnie H. Robinson, Agency Regulatory Coordinator, 13 S. Thirteenth Street, Richmond, VA 23219, telephone (804) 371-2631.

LIBRARY BOARD

January 24, 1994 - 10:30 a.m. – Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Supreme Court Room, 3rd Floor, Richmond, Virginia. ♿

A meeting to discuss administrative matters of the Virginia State Library and Archives.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Archives and Records Management Committee

January 24, 1994 - 9 a.m. – Open Meeting
The Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, Virginia. ♿

A meeting to discuss matters pertaining to archives and records management.

Contact: Jean H. Taylor, Secretary to State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

January 24, 1994 - 9 a.m. – Open Meeting
11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ♿

A meeting to discuss the issues on the agenda for the Library Board to be held later that morning.

Contact: Tony Yankus, Director, Library Development, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219-3491, toll-free 1-800-336-5266, or (804) 786-3618/TDD ☎

COMMISSION ON LOCAL GOVERNMENT

† **January 10, 1993 - 10 a.m.** – Open Meeting
Department of Agriculture and Consumer Affairs, Washington Building, Board Room, 2nd Floor, Richmond, Virginia.

A regular meeting to consider such matters as may be presented. Persons desiring to participate in the commission's meeting and requiring special accommodations or interpreter services should contact the commission's offices.

Contact: Barbara Bingham, Administrative Assistant, 702 Eighth Street Office Building, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

LONGWOOD COLLEGE

Academic Affairs Committee

† **January 17, 1994 - 4 p.m.** – Open Meeting
Longwood College, Board Room, South Ruffner, 201 High Street, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High Street, Farmville, VA 23909-1899, telephone (804) 395-2001 or toll free 1-800-828-1120.

Student Affairs Committee

† **January 17, 1994 - 6:30 p.m.** – Open Meeting
Longwood College, Board Room, South Ruffner, 201 High Street, Farmville, Virginia. ♿

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High Street, Farmville, VA 23909-1899, telephone (804) 395-2001 or toll free 1-800-828-1120.

STATE LOTTERY DEPARTMENT (STATE LOTTERY BOARD)

January 24, 1994 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 State Lottery Board intends to amend regulations entitled: **VR 447-01-1. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with statutory changes to establishing procedures for soliciting input of interested parties in the formation and development of regulations.

Statutory Authority: §§ 9-6.14:7.1 and 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

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January 24, 1994 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 State Lottery Board intends to amend regulations entitled: **VR 447-01-2. Administration Regulations.** The purpose of the proposed amendments is to include appeal procedures for placement of an instant ticket vending machine or a self-service terminal, procurement procedures for the purchase of goods and services exempt from competitive procurement and contract change order procedures.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

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January 24, 1994 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 State Lottery Board

intends to amend regulations entitled: **VR 447-02-1. Instant Game Regulations.** The purpose of the proposed amendments is to incorporate housekeeping and technical changes, as well as substantive changes to include lottery retailer conduct, license standards validation requirements and payment of prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

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January 24, 1994 - 10 a.m. – Public Hearing
State Lottery Department, 2201 West Broad Street, Richmond, Virginia.

January 21, 1994 – 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 State Lottery Board intends to amend regulations entitled: **VR 447-02-2. On-line Game Regulations.** The proposed amendments incorporate numerous housekeeping, technical and substantive changes throughout the On-Line Game Regulations, including retailer compensation and conduct, license and operational fees, license standards, validation requirements and payment of prizes and disposition of unclaimed prizes.

Statutory Authority: § 58.1-4007 of the Code of Virginia.

Contact: Barbara L. Robertson, Staff Officer, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106.

MARINE RESOURCES COMMISSION

January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Water Division, Board Room, 4900 Cox Rd., Innsbrook, Glen Allen, Virginia

January 31, 1994 – 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 Marine Resources Commission intends to amend regulations entitled: **VR 450-01-0045. Public Participation Guidelines.** The purpose of the proposed amendments is to comply with the 1993 amendments to the Administrative Process Act and conform with the other agencies in the Natural Resources Secretariat.

Statutory Authority: §§ 28.2-103 and 9-6.14:7.1 of the Code of Virginia.

Contact: Robert W. Grabb, Chief, Habitat Management Division, P. O. Box 756, Newport News, VA 23607-0756 or toll-free 1-800-541-4646.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

† **February 25, 1994** – Written comments may be submitted through 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** and **adopt** regulations entitled: **VR 460-01-46:1, 460-01-76, 460-01-79.19, 460-02-4.3900, 460-02-4.3910, 460-02-3.1300, 460-03-3.1301, 460-02-4.1410, and 460-04-4.3910. PASARR; Education Component in NF's; NF Residents' Appeal Rights.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, providing for preadmission screening and annual resident reviews, education component requirements for children in nursing facilities, and nursing facilities' residents appeal rights.

The federal requirements regarding preadmission screening and annual resident review (PASARR) are that placement determinations be completed on all applicants to a nursing facility. If the Level I assessment indicates the presence of a condition of mental illness or mental retardation, as defined by HCFA, the applicant must be referred for a Level I evaluation prior to admission to the nursing facility. Residents with conditions of mental illness or mental retardation are to be reviewed at least annually.

On November 30, 1992, the Health Care Financing Administration (HCFA) published final regulations concerning PASARR. The final regulations published by HCFA are similar to the original requirements but with several significant changes. First, the definition of mental illness has been revised. Because the new definition stresses severity of the mental illness, the change should result in a decrease in the number of individuals referred for a Level II evaluation for mental illness. Second, HCFA is allowing states to determine personnel qualifications for specific parts of the Level II evaluation process. Third, states are allowed discretion in defining specialized services to be offered and in establishing categorical determinations.

When DMAS first promulgated its regulations for specialized care services in nursing facilities, requirements for the provision of an education component were included. Initially, the regulation required that "the nursing facility ... provide for (emphasis added) the educational and habilitative needs of the child." At the time of promulgation, it was DMAS' intent that the nursing facility coordinate (emphasis added) such services with the state or local educational authority. The correct interpretation of thi intent has recently come under question, so thi

language is being clarified. Residents of nursing facilities who wish to appeal a nursing facility notice of intent to transfer or discharge will file their appeal with the DMAS' Division of Client Appeals and not with the Department of Health. DMAS will hear appeals filed by any nursing facility resident regardless of the payment source. Prior to the DMAS emergency regulation, DMAS' Division of Client Appeals only heard appeals when Medicaid was the payment source.

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

Written comments may be submitted through February 25, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-2.6100:1. Eligibility Conditions and Requirements: Guardianship Fees in Post-Eligibility Treatment of Income.** Medicaid eligibility policy has long allowed deduction of guardianship fees in determining countable income for the purposes of calculating patient pay for institutional and home- and community-based waiver services. Since a guardian has control of an individual's income, he deducts his fee before any of the income is applied to the bills of an incompetent individual. Thus, this income is not available to be applied to the cost of institutional and home- and community-based waiver services.

If Medicaid does not add guardianship fees to the personal needs allowance, then Medicaid calculaitons of the patient's income available for patient pay will exceed that amount actually available and Medicaid will not pay the full balance of the institutional and home- and community-based waiver services bill. The result will be an outstanding balance for the institutional and home- and community-based waiver services that the provider can collect neither from the patient nor from Medicaid.

The Medicaid eligibility policy has recognized that the income available for patient pay is the net income after deduction of guardianship fees. The long-standing policy was based upon interpretation of the way in which the Social Security Administration calculates income for eligibility for Supplemental Security Income. The Health Care Financing Administration issued an instruction that confirmed that guardianship fees are allowable deductions, but directed states to specify that deduction in the State Plan for Medical Assistance. This regulatory change is designed to specify the deduction of guardianship fees as required by the Health Care Financing Administration and will ensure that the deductions are applied uniformly to all recipients of institutional and home- and community-based waiver services who pay guardianship fees.

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

Written comments may be submitted through February 25, 1994, to Ann Cook, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **February 25, 1994** – Written comments may be sumbitted through 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 460-03-3.1100, 460-02-3.1300, 460-03-3.1301, 460-04-8.10, 460-04-3.1300. Criteria for Preadmission Screening and Continued Stay.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations containing the same policies. These regulations concern the criteria by which applicants for and recipients of long-term care services and community-based care services are evaluated for appropriate placement.

The Department of Medical Assistance Services (DMAS) promulgated an emergency regulation for these criteria effective September 1, 1992. The agency's proposed regulations were filed March 30, 1993, with the Registrar of Regulations for publication to begin its comment period from April 20 - June 18, 1993. DMAS held 4 public hearings in different statewide locations and received numerous comments from individuals and organization. These initial proposed regulations were substantially similar to the preceding emergency regulations. Commenters on those emergency regulations expressed a belief that they have resulted in the discharge of numerous nursing facility residents and the denial of various long-term care services to numerous others. Although the department's research demonstrated that there had not been discharges from nursing facilities based on those emergency regulations, it was clear that the

department's intent to clarify medical/nursing management had not been clearly communicated. Since the regulations proposed by the agency for public comment period mirrored the emergency regulations, they were opposed by the various interests groups concerned with care for the elderly and disabled. Due to the 1993 General Assembly's modifications to § 9-6.14:1 et seq. of the Code of Virginia, DMAS was required to promulgate a second set of emergency regulations. DMAS is now reinitiating the Article 2 process (§ 9-6.14:7.1) to conform to the new APA promulgation requirements.

Due to the significant comments DMAS received on the prior proposed regulations, the second set of emergency regulations contained revisions to the definition of medical/nursing need and revisions to the evaluation of persons seeking community-based care to avoid future nursing facility placement. HCFA allows the Commonwealth to offer home- and community-based care to persons who meet nursing facility criteria and to those whom it determines will meet nursing facility criteria in the near future except for the provision of community-based services. In the currently effective emergency regulations, DMAS established the criteria which define when an individual can be determined to be at risk of nursing facility placement in the near future as "prenursing facility criteria." These proposed regulations mirror the current emergency regulations on which the agency has received no comments.

Nursing Home Preadmission Screening Committees will still use a separate assessment instrument for preadmission screening, the prupose of which is to determine appropriate medical care between community services and institutionalization.

In addition, this regulation package makes amendments to clarify and improve the consistency of the regulations as they relate to outpatient rehabilitation. DMAS is making certain nonsubstantive changes as follows. The authorization form for extended outpatient rehabilitation services no longer requires a physician's signature. Although the physician does not sign the form, there is no change in the requirement that attached medical justification must include physician orders or a plan of care signed by the physician. Services that are non-covered home health services are described. These services are identified for provider clarification and represent current policy. Also, technical corrections have been made to bring the Plan into compliance with the 1992 Appropriations Act and previously modified policies (i.e., deleting references to the repealed Second Surgical Opinion program under § 2. Outpatient hospital services and § 5. Physicians services).

The program's policy of covering services provided by a licensed clinical social worker under the direct supervision of a physician is extended to include such services provided under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical. This change merely makes policy consistent across different provider types.

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

Written comments may be submitted through February 25, 1994, to Betty Cochran, Director, Division of Quality Care Assurance, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **February 25, 1994** – Written comments may be submitted through 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 460-03-4.1922. Item j. Payment of Title XVIII Part A and Part B Deductible/Coinsurance.** This action affects Attachment 4.19 B, Supplement 2, Methods and Standards for Establishing Payment Rates. Other Types of Care, item j, Payment Title XVIII Part A and Part B Deductible/Coinsurance.

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 inpatient skilled nursing under Medicare Part A (hospital insurance). Part A pays for all covered services in a skilled nursing facility for the first 20 days. For the next 80 days, it pays for all covered services except for a specific amount determined at the beginning of each calendar year, i.e., Medicare pays for all covered services except for $84.50 per day which is the responsibility of the patient; in the case of the Medicaid recipient it is the responsibility of DMAS.

Federal statute and regulations allow DMAS to limit its coinsurance payments to the Medicaid maximum instead of the Medicare maximum allowable payment. Therefore, this proposed permanent regulation limits the payment of the Medicare Part A coinsurance amount paid by the department so that the combined payments of Medicare and Medicaid do not exceed the Medicaid per diem rate for the specific nursing facility of the Medicare/Medicaid recipient's residence.

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

Written comments may be submitted through February 25, 1994, to C. Mack Brankley, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300,

Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1923. Establishment of Rate Per Visit: State Plan for Medical Assistance Relating to Home Health Reimbursement.** This proposal will promulgate permanent regulations to supersede existing emergency regulations which were adopted prusuant to a 1993 General Assembly mandate. The regulations provide for the fee-for-service reimbursement of home health agencies.

The 1993 General Assembly, in the Appropriations Act, directed the Board of Medical Assistance Services to adopt revised regulations governing home health agency reimbursement methodologies, effective July 1, 1993, that would (i) eliminate the distinction between urban and rural peer groups; (ii) utilize the weighted median cost per service from 1989 for freestanding agencies as a basis for establishing rates; and (iii) reimburse hospital-based home health agencies at the rate set for freestanding home health agencies. The General Assembly also required that the adopted regulations comply with federal regulations regarding access to care. In addition, the Joint Legislative Audit and Review Commission recommended that a revision be made to the existing statistical methodology.

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

Written comments may be submitted through February 25, 1994, to Richard Weinstein, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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† **February 25, 1994** – Written comments may be submitted through 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 460-03-4.1940:1, 460-03-4.1941. Nursing Home Payment System: 95% Rule, Criminal Record Checks, Blood Borne Pathogens.** The purpose of this proposal is to promulgate permanent regulations, to supersede the existing emergency regulations, regarding nursing facility 95% occupancy rule and criminal record checks. This proposal also provides for permanent regulations for the reimbursement for nursing facilities' costs of complying with OSHA requirements for protecting employees against exposure to blood.

95% Occupancy Rule: Prior to the emergency regulation, DMAS set a nursing facility's (NF) interim plant rate for the year in approximately the ninth month of the NF's fiscal year. This could have resulted in a new provider receiving substantial overpayment during the first nine months of the second fiscal year. This proposed amendment provides that the 95% occupancy rule will be applied on the first day of a new provider's second fiscal year. The effect of this amendment will be to eliminate any potential overpayments in the first nine months of the provider's second fiscal year.

Criminal Record Checks: The 1993 General Assembly, in Chapter 994 of the Acts of Assembly of 1993 (Item 313. T), directed DMAS to adopt revised regulations and forms governing nursing facilities that would reimburse providers for the costs of complying with the requirement of obtaining criminal record background checks on nursing facility employees, as implemented by § 32.1-126.01 of the Code of Virginia. This proposed regulation intends to make permanent those policies currently in effect under an emergency regulation.

Blood Borne Pathogens: The Occupational Safety and Health Administration (OSHA) promulgated a standard, effective March 6, 1992, to eliminate or minimize occupational exposure to blood borne pathogens (final rule published in the December 6, 1991 Federal Register, adopting 29 CFR 1910.1030). The Virginia Safety and Health Codes Board of the Department of Labor and Industry adopted these regulations as VR 415-02-83, effective June 1, 1992 (published in the Virginia Register of Regulations, pp. 2145-2158, March 23, 1992).

The General Assembly, in Item 312.1 of the 1993 Budget Bill, directed DMAS to sudy the cost of reimbursing nursing facilities for complying with these new requirements. DMAS has completed its study and, with input from the nursing facility community, is proposing revisions to the State Plan to permit reimbursement for these required costs. If DMAS takes no action with respect to the cost of the OSHA requirements, some of the cost would still be reimbursed under existing rate setting rules. However, some facilities would be reimbursed less than all the costs of implementation, and some would receive little

or no additional reimbursement.

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

Written comments may be submitted through February 25, 1994, to N. Stanley Fields, Director, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Medical Assistance Services intends to amend regulations entitled: **VR 460-05-1000.0000. State/Local Hospitalization Programs.** The purpose of the prososed amendments is to modify the state/local hospitalization fiscal year to limit the allocation of remaining state funds and limit the use of funds allocated for one fiscal year to that year.

Sections 32.1-343 through 32.1-350 of the Code of Virginia established the State/Local Hospitalization Program (SLH) within the Department of Medical Assistance Services. The purpose of the SLH program is to provide for the inpatient and outpatient hospital care of Virginians who have no health insurance and whose income falls below the federal poverty

The SLH program is not an entitlement program. The amount of general fund available for this program is determined by the General Assembly each year. Payment for services provided to eligible individuals is made only to the extent that funds are available in the account of the locality in which the eligible individual resides. All counties and cities in the Commonwealth are required to participate in the SLH program.

Available funds are allocated annually by the department to localities on the basis of the estimated total cost of required services for the locality, less the required local matching funds. Since the appropriation is insufficient to fully fund estimated cost, local allocations are actually a percentage of total need. Funds allocated to localities are maintained in locality-specific accounts and can be spent only for services provided to residents of that locality.

The actual local matching rate is computed on the basis of a formula that considers revenue capacity adjusted for local per capita income. No locality's contribution will exceed 25% of the cost of estimated SLH services for the locality.

The statute requires that general funds remaining at the end of the state fiscal year are used to offset the calculated local share for the following year. These funds are allocated among the localities first to offset increases in the local shares, then to offset calculated local shares for all localities.

The allocations for most localities are exhausted by the end of March of each year and payments for claims submitted after that date are rejected for lack of funds. A few localities have sufficient funds for all claims submitted during the year and some have a surplus at the end of the year. In order to process claims before the end of state fiscal year the department has adopted, with the concurrence of the Secretary of Health and Human Services and the Department of Planning and Budget, a policy under which state/local hospitalization claims with service dates of May 1 and later of any year are processed for payment in the following state fiscal year. This cutoff for claims is necessary to allow adequate time to resolve any outstanding SLH claims and to perform the necessary accounting reconciliations for the state fiscal year ending June 30. The fund will be reallocated for payment of the following fiscal year claims.

This regulation is necessary to clarify the policy adopted by the department and is being promulgated as the result of an appeal filed by a recipient who questioned the policy because it had not been promulgated as a regulation. The proposed regulation defines the claims that are payable from the general fund appropriation of any fiscal year as those that are for services rendered between May 1 and April 30 to the extent that funds exist in the locality allocation at the time the claim is processed. It will allow the necessary lead time to perform claims resolution and state year-end reconciliation procedures.

This regulation also clarifies that funds remaining at year end are used only for the purpose of offsetting the calculated share for the following fiscal year as required by statute. This clarification is needed to prohibit possible claims against SLH funds for other purposes. Specifically, SLH funds allocated to pay for provider claims in one fiscal year would be prohibited from being used to pay claims in another fiscal year. This change is advantageous to the public because the agency will be better able to forecast the funds necessary to cover anticipated medical needs for those eligible to the SLH program.

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

Written comments may be submitted through January 14, 1994, to David Austin, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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January 28, 1994 – Written comments may be submitted through 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 Services: Preauthorization of Case Management for the Elderly.** The purpose of the proposed amendment is to streamline the Medicaid utilization control requirements imposed on agencies participating in the Case Management for the Elderly Pilot Projects by conforming the Medicaid requirements with those of the policy for the pilot projects imposed by the Long-Term Care Council.

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

Written comments may be submitted through January 28, 1994, to Ann E. Cook, Eligibility and Regulatory Consultant, 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) 371-8850.

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January 28, 1994 - Written comments may be submitted through 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 460-03-3.1100, VR 460-02-3.1300, VR 460-04-8.12, VR 460-04-8.1500. DMHMR Community and Waiver Services.** The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations. The permanent regulations will remove certain administrative impediments to the effective and efficient implementation of mental retardation waiver services in cooperation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. They will also allow persons having conditions related to mental retardation to be served by providers under contract with the Department of Rehabilitative Services (DRS).

The parts of the State Plan for Medical Assistance affected by this action are: Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A&B), Case Management Services (Supplement 2 to Attachment 3.1 A). The state-only regulations affected by this action are: Home and Community-Based Care Services for Individuals with Mental Retardation (VR 460-04-8.12) and Community Mental Health Services, Amount, Duration, and Scope of Services (VR 460-04-8.1500).

The emergency regulations broadened the provider qualifications for persons with related conditions to include those providers contracted by DRS as habilitative service providers. The emergency regulations did not affect the amount or scope of services an individual may receive, did not affect the state's approved waiver for community services to persons with mental retardation, and did not impact on the quality of services being provided to the population. The key provisions of this proposed regulatory action are described below.

The changes to the State Plan for targeted case management services for persons with mental retardation and mental illness make consistent the requirement for a face-to-face contact (between the patient and provider) every 90 days, regardless of the case management service being offered, and clarify the frequency as once every 90 days rather than one within a 90-day period. Another change allows up to 60 days for completion of the plan of care from the initiation of services. Changes to the service limitations on State Plan community mental health and mental retardation services do not change the amount of services an individual is able to receive, but only change the previous designation of "days" to "units" which is consistent with the manner in which these services are billed. The two levels of day health and rehabilitation services have been removed. Additionally, changes are made to revise the existing definition of developmental disability and to rename the definition "related conditions" to conform to the designation used by the Health Care Financing Administration (HCFA) in OBRA '87. The prior authorization requirement for case management for this group is also being removed.

Another change clarifies coverage of day health and rehabilitation services for persons with mental retardation and persons with related conditions. It also allows providers contracted with DRS as habilitation providers to be qualified for Medicaid reimbursement for day health and rehabilitation services. Reference to two waivers and use of the Inventory for Client an Agency Planning (ICAP) have been removed because the Commonwealth is consolidating the two waivers into one waiver for renewal in 1993. The Commonwealth is also revising the assessment and will discontinue using the ICAP as the required assessment for MR Waiver Services. The requirement for an annual physical and psychological examination has been removed to eliminate unnecessary duplication. Freedom of choice language has been strengthened to

respond to concerns expressed in this area.

These proposed regulations modify the definition of some existing services and broaden the range of services which may be offered to individuals in the MR waiver by adding five new services: Personal Assistance, Assistive Technology, Environmental Modifications, Respite Care, and Nursing Services. Prevocational Services, previously included in Habilitation Services, has now been included under the service titled Day Support. The definition of the services and provider qualifications have been developed in conjunction with the MR Executive Workgroup and are a continuation of the effort initiated in the emergency regulations to remove impediments to the effective and efficient administration of services to persons with mental retardation.

While these regulations add five cheaper substitute services to the MR Waiver program, the cost savings will be offset by increased utilization. The increased utilization is limited by the current allocated general funds. Thus, no budget impact from the proposed regulations is expected.

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

Written comments may be submitted through January 28, 1994, to Chris Pruett, Manager, 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) 371-8850.

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January 28, 1994 - Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.900. Public Participation Guidelines.** The purpose of this proposal is to amend the agency's Public Participation Guidelines to be consistent with provisions of the Administrative Process Act.

Effective October 1984 the Department of Medical Assistance Services (DMAS) became subject to the Administrative Process Act. Because the State Plan is a "regulation" as defined in § 9-6.14:4 F of the Code of Virginia, amendments to it must be promulgated in accordance with the Administrative Process Act.

The Administrative Process Act (§ 9-6.14:7.1 et seq. of the Code of Virginia) requires the development and use of Public Participation Guidelines by executive agencies. DMAS' Public Participation Guidelines became effective November 1, 1985, and were most recently revised effective April 1991.

The 1993 General Assembly-approved House Bill 1652 made numerous changes in the Administrative Process Act which were intended to improve and increase the public's opportunities to participate in the Commonwealth's executive agencies' rulemaking processes. These changes in the Act necessitate a modification to the DMAS' Public Participation Guidelines. Specifically, § 4 A is being modified regarding methods for soliciting the input of interested parties in the development of regulations.

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

Written comments may be submitted through January 28, 1994, to Roberta Jonas, 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) 371-8850.

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February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1940. Methods and Standards for Establishing Payment Rates – Inpatient Hospital Care: Nonenrolled Provider Reimbursement.** The purpose of this proposal is to reimburse out-of-state nonenrolled providers at amounts which are more consistent with the reimbursement amounts for instate enrolled providers.

The section of the State Plan for Medical assistance affected by this action is the Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care (Attachment 4.19-A).

Medicaid providers have the option of enrolling with the program to serve Virginia Medicaid recipients. Without exception, high volume providers enroll in the program. The Code of Federal Regulations at 42 CFR 421.52 provides that the state must furnish Medicaid to recipients utilizing nonenrolled hospitals in several specific circumstances.

Currently, reimbursement for nonenrolled hospitals is limited to a percentage of their covered charges. The percentage is derived from the ratio of reimbursable inpatient costs to inpatient charges of enrolled

providers less 5% which represents the cost of manually processing the claims. This can result in excessive reimbursement for nonenrolled providers that have very high charges.

For purposes of maintaining equitable reimbursement levels between enrolled and nonenrolled providers, the Department of Medical Assistance Services has determined that the excessive reimbursement could be eliminated through the imposition of a maximum reimbursement amount or cap. This proposed amendment caps the reimbursement to nonenrolled providers. The cap is the Department of Medical Assistance Services' average per diem of enrolled providers, excluding state-owned teaching hospitals' per diems and disproportionate share adjustment payments. The cap will eliminate excessive reimbursement to nonenrolled providers.

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

Written comments may be submitted through February 11, 1994, to Scott Crawford, Manager, Division of Cost Settlement and Audit, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

Drug Utilization Review Board

January 7, 1994 - 3 p.m. – Open Meeting
600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting. Routine business will be conducted.

Contact: Carol B. Pugh, Pharm.D., DUR Program Consultant, Quality Care Assurance Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

February 11, 1994 – Written comments may be submitted through 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 **repeal** regulations entitled: **VR 465-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 465-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to establish requirements governing Public Participation Guidelines. The proposed regulations will replace emergency regulations VR 465-01-01 in effect on June 28, 1993, due to new statutes. No public hearing will be held unless requested; the regulations respond to statutory changes. The subject, substance, issues, basis, purpose and estimated impact may be requested in addition to the proposed regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Written comments may be submitted until February 11, 1994, to Hilary H. Connor, M.D., Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Russell Porter, Assistant Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-7197/TDD ☎

Ad Hoc Committee on HIV

January 14, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, Board Room 4, 5th Floor, Richmond, Virginia. ♿

A meeting to review the board's position on HIV and make recommendations to the full board. The chairman will entertain public comments for 10 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Informal Conference Committee

† **January 5, 1994 - 10:30 a.m.** – Open Meeting
Sheraton Inn - Roanoke Airport, 2727 Ferndale Drive, Roanoke, Virginia. ♿

† **January 12, 1994 - 9 a.m.** – Open Meeting
† **January 25, 1994 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 6606 W. Broad Street, Richmond, Virginia. ♿

January 13, 1994 - 9:30 a.m. – Open Meeting
Sheraton-Fredericksburg, I-95 and Route 3, Fredericksburg, Virginia. ♿

† **January 19, 1994 - 9:30 a.m.** – Open Meeting
Holiday Inn - South, US 1 and I-95, Fredericksburg, Virginia. ♿

† **January 28, 1994 - 9:30 a.m.** – Open Meeting
Fort Magruder Inn, Route 60 East, Williamsburg, Virginia. ♿

A meeting to inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Advisory Board on Physical Therapy

January 13, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, VA 23230-1717 ♿

A meeting to conduct a regulatory review of its current regulations, VR 465-03-01, to ensure consistency with national and state requirements for the protection of the public. The chair will receive public comments for the first 15 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, VA 23230-1717, telphone (804) 662-9923 or (804) 662-7197/TDD ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

January 19, 1994 - 10 a.m. – Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Building, 13th Floor Conference Room, Richmond, Virginia. ♿

A regular monthly meeting. Agenda to be published on January 12. Agenda can be obtained by calling Jane Helfrich.

Tuesday: Informal Session - 8 p.m.

Wednesday: Committee Meetings - 9 a.m.

Regular Session - 10 a.m. See agenda for location.

Contact: Jane V. Helfrich, Board Administrator, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

VIRGINIA MILITARY INSTITUTE

Board of Visitors

† **February 12, 1994 - 8:30 a.m.** – Open Meeting
Smith Hall, Virginia Military Institute, Lexington, Virginia. ♿

A regular meeting to (i) receive committee reports; (ii) consider 1994-1995 budget; and (iii) receive reports on visits to academic divisions and departments.

Contact: Colonel Edwin L. Dooley, Jr., Secretary, Board of Visitors, Virginia Military Institute, Lexington, VA 24450, telephone (703) 464-7206

DEPARTMENT OF MINES, MINERALS AND ENERGY

February 2, 1994 - 1 p.m. – Open Meeting
Department of Mines, Minerals and Energy, 202 N. Ninth St., Room 829, Richmond, Virginia

A public meeting to receive comments on the department's guidelines for public participation in the regulatory development process.

Contact: Stephen A. Walz, Policy and Planning Manager, Department of Mines, Minerals and Energy, 202 N. Ninth St., Richmond, VA 23219, telephone (804) 692-3200.

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February 2, 1994 - 1 p.m. – Public Hearing
Department of Mines, Minerals and Energy, 202 N. Ninth Street, Room 829, Richmond, Virginia.

February 11, 1994 – Written comments may be submitted through this date.

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 480-01-1. Public Participation Guidelines.** The purpose of the proposed amendments is to reflect the order of the regulatory process under the Administrative Process Act and clarify that the guidelines apply to the Virginia Gas and Oil Board and Board of Examiners.

Statutory Authority: §§ 9-6.14:7.1, 45.1-1.3, 45.1-12 and 45.1-361.15 of the Code of Virginia.

Contact: Stephen A. Walz, Policy and Planning Manager, Department of Mines, Minerals and Energy, 202 N. Ninth Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3200.

DEPARTMENT OF MOTOR VEHICLES

Medical Advisory Board

† **January 12, 1994 - 1 p.m.** – Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia ♿

A regular business meeting open to the public.

Contact: Karen Ruby, Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

Motor Vehicle Dealers' Advisory Board

January 20, 1994 - 9:30 a.m. – Open Meeting
Department of Motor Vehicles, 2300 West Broad Street, Room 702, Richmond, Virginia.

A meeting to review dealer related activities and any possible legislation that could have an impact on the consumers/dealers.

Contact: L. Stephen Stupasky, Manager, Dealer Services Division, Department of Motor Vehicles, 2300 W. Broad Street, Richmond, VA 23269-0001, telephone (804) 367-2921.

STATE NETWORKING USERS ADVISORY BOARD

December 13, 1993 - noon – Open Meeting
Eastern State Hospital, Building 9 Conference Room, Williamsburg, Virginia.

A meeting to discuss matters regarding network development statewide.

Contact: John C. Tyson, State Librarian, Virginia State Library and Archives, 11th Street at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2332, toll-free 1-800-336-5266, or (804) 786-3618/TDD

BOARD OF NURSING

† **January 25, 1994 - 8:30 a.m.** – Open Meeting
† **January 26, 1994 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting to consider matters relating to nursing education programs, discipline of licensees, licensure by examination and other matters under the jurisdiction of the board. Public comment will be received during an open fourm session beginning at 11 a.m. on Tuesday, January 27, 1994. At 3 p.m. on January 25, 1994, the board will consider and adopt proposed Public Participation Guidelines to replace those adopted as emergency regulations in June 1993. The board may also discuss plans to develop future changes in its regulations.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9909.

† **January 24, 1994 - 9 a.m.** – Open Meeting
† **January 27, 1994 - 8:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 2, Richmond, Virginia.

A panel of the board will conduct formal hearings. Two Special Conference Committees may conduct informal conferences in the afternoon if panel agenda is completed in the morning. Public comment will not be received.

Contact: Corrine F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD

BOARD NURSING HOME ADMINISTRATORS

† **February 25, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Nursing Home Administrators intends to adopt regulations entitled: **VR 500-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines currently in effect.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3101 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

BOARD FOR OPTICIANS

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Opticians intends to **repeal** regulations entitled: **VR 505-01-0. Public Participation Guidelines** and **adopt** regulations entitled: **VR 505-01-0:1. Public Participation Guidelines.** The purpose of the proposed regulatory action is to promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of opticians in Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

† **February 4, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. FT3001 5

A meeting to conduct regular board business and any other matters which may require board action.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF OPTOMETRY

† **January 12, 1994 - 8 a.m.** – Open Meeting
Courtyard Marriott, 6400 W. Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

An Informal Conference Committee meeting. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

† **January 12, 1994 - 9 a.m.** – Open Meeting
Courtyard Marriott, 6400 W. Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A general board meeting. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

Ad Hoc Regulatory Advisory Committee

† **January 5, 1994 - 2:30 p.m.** – Open Meeting
Courtyard Marriott, 6400 West Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting to discuss potential amendments to the board's regulations regarding contact lens prescriptions. Brief public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910 or (804) 662-7197/TDD ☎

BOARD OF PHARMACY

† **January 13, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

† **January 18, 1994 - 9 a.m.** – Open Meeting
Departmen of Health Professions, 6606 W. Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

Informal conferences.

Contact: Scotti Milley, Executive Director, Board of Pharmacy, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

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† **February 26, 1994** – 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 Pharmacy intends to adopt regulations entitled: **VR 530-01-3. Public Participation Guidelines.** The proposed regulations are intended to replace emergency regulations governing Public Participation Guidelines which are currently in effect. No public hearing is planned unless requested.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2400 of the Code of Virginia.

Contact: Scotti Milley, Executive Director, Board of Pharmacy, 6606 W. Broad Street, Richmond, VA 23230, telephone (804) 662-9911.

BOARD OF PROFESSIONAL COUNSELORS

February 13, 1994 – 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 Professional Counselors intends to amend regulations entitled: **VR 560-01-03. Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed amendments is to set a new examination fee and reduce renewal fees.

Statutory Authority: §§ 54.1-113, 54.1-2400 and 54.1-3500 of the Code of Virginia.

Contact: Evelyn B. Brown, Executive Director, Board of Professional Counselors, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION (BOARD OF)

January 15, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of

Professional and Occupational Regulation intends to adopt regulations entitled: **VR 190-00-02. Employment Agencies Program Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the employment agencies program to follow to inform and incorporate public participation when promulgating regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-1302 of the Code of Virginia.

Contact: Mark N. Courtney, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8590.

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January 15, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Professional and Occupational Regulation intends to **repeal** regulations entitled: **VR 190-00-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 190-00-03. Polygraph Examiners Public Participation Guidelines.** The purpose of the proposed regulatory action is to promulgate new public participation guidelines as provided for in § 9-6.14:7.1 of the Code of Virginia regarding the solicitation of input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of polygraph examiners in Virginia.

Statutory Authority: §§ 9-6.14:7.1, 54.1-201 and 54.1-1802 of the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

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February 10, 1994 – 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 Professional and Occupational Regulation intends to adopt regulations entitled: **VR 190-00-04. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the board to follow to inform and incorporate public participation when promulgating board regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-310 of the Code of Virginia.

Contact: Joyce K. Brown, Secretary to the Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564.

BOARD OF PSYCHOLOGY

Credentials Committee

† **January 18, 1994 - 9 a.m.** – Open Meeting
Department of Health Professions, 6606 W. Broad Street, 4th Floor, Room 1, Richmond, Virginia.

An informal fact finding will be conducted in accordance with §§ 54.1-2400 and 9-6.14:7.1 of the Code of Virginia to determine the eligibility of an applicant for graduate coursework acceptance. No public comment will be received.

Contact: Evelyn Brown, Executive Director or Jane Ballard, Administrative Assistant, Board of Psychology, 6606 W. Broad St., Richmond, Va 23230-1717, telephone (804) 662-9913.

REAL ESTATE APPRAISER BOARD

January 18, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A general business meeting.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

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February 10, 1994 – 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 **repeal** regulations entitled: **VR 583-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 583-01-1:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Real Estate Appraiser Board to follow to inform and incorporate public participation when promulgating appraiser regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-2013 of the Code of Virginia.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2039.

Complaints Committee

January 5, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to review complaints.

Contact: Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230, telephone (804) 367-2039.

REAL ESTATE BOARD

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Real Estate Board intends to **repeal** regulations entitled: **VR 585-01-0. Public Participation Guidelines** and **adopt** regulations entitled: **VR 585-01-0:1. Public Participation Guidelines.** The purpose of the proposed guidelines is to set procedures for the Real Estate Board to follow to inform and incorporate public participation when promulgating real estate regulations.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Joan L. White, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

† **January 26, 1994 - 10 a.m.** – Open Meeting
City Council Chambers, City of Danville, City Hall, Municipal Building, Patton St., Danville, Virginia FT3001 5

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia; and VR 355-34-02.

Contact: Constance G. Talbert, Secretary to the Board, 1500 E. Main Street, Richmond, VA 23218, telephone (804) 786-1750.

VIRGINIA RESOURCES AUTHORITY

January 11, 1994 - 9:30 a.m. – Open Meeting
February 9, 1994 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the prior meeting, to review the authority's operations for the prior months, and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

Contact: Shockley D. Gardner, Jr., 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100, FAX number (804) 644-3109.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

† **January 12, 1994 - 10 a.m.** – Public Hearing
Department of Social Services, Training Room #3, Lower Level, 730 East Broad Street, Richmond, Virginia

February 28, 1994 – 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 State Board of Social Services intends to adopt regulations entitled: **VR 615-53-01.2. Child Day Care Services Policy.** The proposed regulation establishes child day care policy that the department must have to implement its child day care programs.

Statutory Authority: §§ 63.1-25 and 63.1-55 of the Code of Virginia.

Written comments may be submitted until February 28, 1994, to Paula S. Mercer, Department of Social Services, 730 East Broad Street, Richmond, VA 23219-1849.

Contact: Margaret Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1820, telephone (804) 692-1820.

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January 11, 1994 - 1 p.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

January 12, 1994 - 1 p.m. – Public Hearing
Fairfax County Office for Children, 3701 Pender Drive, Fairfax, Virginia.

January 13, 1994 - 1 p.m. – Public Hearing
Council Chambers, City Hall, Norfolk, Virginia.

January 14, 1994 - 1 p.m. – Public Hearing
City Chambers, Fourth Floor, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

January 18, 1994 - 1 p.m. – Public Hearing

Virginia Highlands Community College, Room 605, Route 372 off of Route 140, Abingdon, Virginia.

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Social Services intends to adopt regulations entitled: **VR 615-01-51. Auxiliary Grants Program: Levels of Care and Rate Setting.** The proposed regulation requires that auxiliary grant recipients be evaluated by case managers to determine level of care needed in adult care residences. Services provided to the auxiliary grant recipient are defined as well as process to be used in establishing auxiliary grant rates for adult care residences.

Statutory Authority: §§ 63.1-25 and 63.1-25.1 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Jeanine LaBrenz, Program Manager, Medical Assistance Unit, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to repeal regulations entitled: **VR 615-22-02. Standards and Regulations for Licensed Homes for Adults.** This regulation is proposed for repeal, and will be replaced with the proposed regulation entitled: VR 615-22-02:1, Standards and Regulations for Licensed Adult Care Residences. No public hearing is scheduled for the repeal of this regulation; however, written comments will be received.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Cheryl Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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January 11, 1994 - 1 p.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

January 12, 1994 - 1 p.m. – Public Hearing
Fairfax County Office for Children, 3701 Pender Drive, Fairfax, Virginia.

January 13, 1994 - 1 p.m. – Public Hearing
Council Chambers, 810 Union Street, 11th Floor, City Hall, Norfolk, Virginia

January 14, 1994 - 1 p.m. – Public Hearing
City Chambers, Fourth Floor, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

January 18, 1994 - 1 p.m. – Public Hearing
Virginia Highlands Community College, Room 605, Route 372 off of Route 140, Abingdon, Virginia.

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-22-02:1. Standards and Regulations for Licensed Adult Care Residences.** The 1993 General Assembly enacted legislation which creates levels of care in licensed homes for adults. This legislation also changes the term "homes for adults" to "adult care residences." The proposed regulation replaces the regulations entitled: Standards and Regulations for Licensed Homes for Adults and has a proposed effective date of June 1, 1994.

Statutory Authority: §§ 63.1-25 and 63.1-174 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Cheryl Worrell, Program Development Supervisor, Department of Social Services, 730 East Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 East Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

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January 11, 1994 - 1 p.m. – Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

January 12, 1994 - 1 p.m. – Public Hearing
Fairfax County Office for Children, 3701 Pender Drive, Fairfax, Virginia.

January 13, 1994 - 1 p.m. – Public Hearing
Council Chambers, City Hall, Norfolk, Virginia.

January 14, 1994 - 1 p.m. – Public Hearing
City Chambers, Fourth Floor, Municipal Building, 215 Church Avenue, S.W., Roanoke, Virginia.

January 18, 1994 - 1 p.m. – Public Hearing
Virginia Highlands Community College, Room 605, Route 372 off Route 140, Abingdon, Virginia.

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to adopt regulations entitled: **VR 615-46-02. Assessment and Case Management in Adult Care Residences.** The proposed regulation sets forth assessment and case management procedures and general information for residents and operators of adult care residences.

Statutory Authority: §§ 63.1-25.1 and 63.1-173.3 of the Code of Virginia.

Written comments may be submitted through February 11, 1994, to Helen B. Leonard, Adult Services Program Manager, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, Richmond, VA 23219, telephone (804) 692-1820.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

January 12, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, Virginia

A general board meeting.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎ .

DEPARTMENT OF TAXATION

January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-2.2. Retail Sales and Use Tax: Adult Care Facilities.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by adult care residences and adult day care centers.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-5. Retail Sales and Use Tax: Agricultural and Seafood Processing.** This regulation clarifies the application of the sales and use tax to agricultural processors and seafood processors.

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

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-6. Retail Sales and Use Tax: Aircraft Sales, Leases and Rentals, Repairs and Replacement Parts, and Maintenance Materials.** This regulation clarifies the application of the retail sales and use tax to aircraft sales, leases and rentals and repairs and maintenance thereof.

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

Contact: W. Bland Sutton, III, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted

through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-24.1. Retail Sales and Use Tax: Commercial Watermen.** This regulation clarifies the application of the sales and use tax to commercial watermen.

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

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-26. Retail Sales and Use Tax: Containers, Packaging Materials and Equipment.** This regulation clarifies what constitutes taxable/exempt packaging materials and equipment for purposes of the retail sales and use tax.

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

Contact: W. Bland Sutton, III, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-33. Retail Sales and Use Tax: Dentists, Dental Laboratories and Dental Supply Houses.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by dentists, dental laboratories and dental supply houses.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled: **VR 630-10-39. Retail Sales and Use Tax: Federal Areas.** The provisions of this regulation are being incorporated into VR 630-10-45, which deals with purchases and sales by governments generally, and thus this regulation is being repealed.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to repeal regulations entitled: **VR 630-10-39.2. Retail Sales and Use Tax: Flags.** The provisions of this regulation are being incorporated into VR 630-10-45, which deals with purchases and sales by governments generally, and thus this regulation is being repealed.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-45. Retail Sales and Use Tax: Governments.** This regulation clarifies existing department policy with respect to purchases and sales by the Commonwealth, its political subdivisions and the federal government.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-45.1. Retail Sales and Use Tax: Harvesting of Forest Products.** This regulation clarifies the application of the sales and use tax to harvesting of forest products.

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

Contact: John Vollino, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-47. Retail Sales and Use Tax: Hospitals, Nursing Homes and Other Medical Related Facilities.** This regulation clarifies the application of the retail sales and use tax to purchases and sales by hospitals, nursing homes and other medical-related facilities.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-64.1. Retail Sales and Use Tax: Medical Equipment and Supplies.** This regulation clarifies the application of the retail sales and use tax to medical equipment and supplies.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-65. Retail Sales and Use Tax: Medicines and Drugs.** This regulation clarifies the application of the retail sales and use tax to purchases and sales of prescription drugs, nonprescription drugs and proprietary medicines and controlled drugs.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-83. Retail Sales and Use Tax: Physicians, Surgeons, and Other Practitioners of the Healing Arts.** This regulation clarifies the application of the retail sales and use tax purchases and sales by licensed physicians, surgeons, and other practitioners of the healing arts.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-10-85.1. Retail Sales and Use Tax: Prescription Medical Appliances–Visual and Audio.** This regulation clarifies the application of the retail sales and use tax to sales of eyeglasses, contact lenses and other ophthalmic aids and hearing aids and supplies. The provisions of this regulation previously were part of another regulation.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-92. Retail Sales and Use Tax: Research.** This regulation clarifies the sales and use tax treatment of sales and purchase transactions made in performing basic research and research and development.

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

Contact: Lonnie T. Lewis, Jr., Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-97.1. Retail Sales and Use Tax: Services.** This regulation clarifies the application of the retail sales and use tax to sales of services.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-98. Retail Sales and Use Tax: Ships or Vessels Used or to be Used Exclusively or Principally in Interstate or Foreign Commerce.** This regulation clarifies the application of the retail sales and use tax to purchases by persons engaged in waterborne commerce and shipbuilding, conversion and repair.

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

Contact: Terry M. Barrett, Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

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January 10, 1994 - 10 a.m. – Public Hearing
Department of Taxation Training Room, 2220 West Broad Street, Richmond, Virginia.

January 14, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to amend regulations entitled: **VR 630-10-108.1. Retail Sales and Use Tax: Typesetting.** This regulation clarifies the sales and use tax treatment of sales and purchase transactions for typesetting.

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

Contact: Lonnie T. Lewis, Jr., Policy Analyst, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-8010.

VIRGINIA PUBLIC TELECOMMUNICATIONS BOARD

† **January 13, 1994 - 10 a.m.** – Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A quarterly board meeting: agenda to include 94-96 budget review, legislative update, FY 94 work plan status report and related itmes of interest.

Contact: Florence M. Strother, Acting Executive Secretary, 110 S. 7th Street, Richmond, VA 23219, telephone (804) 344-5552.

VIRGINIA TRANSPORTATION SAFETY BOARD

† **January 18, 1994 - 10:30 a.m.** – Open Meeting
Marriott Hotel, 500 E. Broad Street, Richmond, Virginia.

A meeting of the board members to discuss 1994 legislative matters and receive a report on youth programs from the National Transportation Safety Board.

Contact: Bill Dennis, Executive Assistant, Department of Motor Vehicles, P. O. Box 27412, Richmond, VA 23269, telephone (804) 367-6614.

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

February 11, 1994 – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of the Treasury and Treasury Board intend to amend regulations entitled: **VR 640-01-1. Public Participation Guidelines for the Department of the Treasury and Treasury Board.** The proposed amendments provide for public petition to develop or amend a regulation and clarify under what condition the use of public hearings and advisory committees are appropriate.

Statutory Authority: §§ 2.1-179 and 9-6.14:7.1 of the Code of Virginia.

Contact: Robert S. Young, Director of Financial Policy, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215-1879, telephone (804) 225-3131.

VIRGINIA RACING COMMISSION

January 3, 1994 – 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 amend regulations entitled: **VR 662-01-01. Public Participation Guidelines.** The purpose of the proposed amendment is to bring the public participation guidelines into conformity with the recent changes in the Administrative Process Act.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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January 3, 1994 – 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 662-02-05. Satellite Facilities.** The purpose of the proposed regulation is to establish conditions under which pari-mutuel wagering on horse races may take place at satellite facilities.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

† **January 12, 1994 - 10 a.m.** – Open Meeting
Tyler Building, 1300 E. Main Street, Richmond, Virginia.

Discussion of procedures relating to site visits, public meetings and informal fact-finding conferences in addition to consideration of proposed regulations relating to public participation guidelines and satellite facilites.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P. O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

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† **February 9, 1994 - 10 a.m.** – Public Hearing
Tyler Building, 1300 E. Main Street, Richmond, Virginia.

February 25, 1994 – Written comments may be submitted through 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 amend regulations entitled: **VR 662-01-02. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering (§ 2.24. Appeals of denial, fine, suspension or revocation of license).** The purpose of the proposed amendment is to repeal an unnecessary section of the regulation.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P. O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

January 22, 1994 - 11 a.m. – Open Meeting
Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ⊡ (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155 or (804) 371-3140/TDD ☎

VIRGINIA WASTE MANAGEMENT BOARD

January 17, 1994 – 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 Waste Management Board intends to **repeal** regulations entitled **VR 672-40-01. Infectious Waste Management Regulations** and **adopt** regulations entitled **VR 672-40-01:1. Regulated Medical Waste Management Regulations.** The regulations contain new management rules for certain medical waste concerning generation, treatment, storage, transportation and disposal of the wastes.

The board, in this action to repeal and replace the Commonwealth's regulations on this subject, intends to improve them through several changes. It wishes to direct attention to certain issues for which the board expressly desires the help and opinion of the public. The board is seeking comments that include explanation, suggested regulatory language, data and basis for the comment. Prior to taking action on final regulations, the board wishes to have a full review and thorough discussion of these and any issues citizens feel are important. Attention to the following issues is specifically requested:

1. Section 2.4 and others require that existing facilities comply with the regulations immediately, except where the existing permit contains a conflict with the new regulations, the conflicting permit condition may be used for six months. Is this time period appropriate and practical, or should another period or procedure be substituted?

2. Sections 11.3 and 11.4 establish procedures, protocols, forms, and standards for approval of new technologies for treating regulated medical waste. Are these technically adequate and are there additional constraints which should be applied to emerging technologies?

3. Are there units, like limited small clinics, which should be eligible for the partial exemption in § 3.2? Are there other aspects of the regulations to which exemptions should accrue through this item?

4. Do the specific references and monitoring requirements in §§ 4.8, 7.6, 8.5 and 9.5 provide adequate control of radiological materials at treatment facilities. Are there specific standards or means which might improve protection from these materials?

5. The standard in Parts V and VI for nonrefrigerated storage of regulated medical waste is seven days after generation. Is this time period too short or too long?

6. The regulations in Parts VII, IX, and X contain certain new standards, for example grinding of regulated medical waste and testing of treatment equipment for alternative technologies. Three new treatment technologies are approved with specific standards. The board would like comment on those standards and detailed specific recommendations for other requirements that are appropriate.

7. The amended regulations require incinerator ash and pollution control dust to be segregated and tested separately. Should the regulations allow the mixing of the ash and dust after testing is complete? Should the mixing be allowed on-site prior to shipment for disposal?

8. Part X contains new procedures for formal permitting of facilities and Part XI contains new procedures for issuance of variances from the regulations. Do these processes adequately address due process, and are they sufficiently clear and comprehensible?

9. Several requirements in the regulations have threshold size criteria such that small facilities may be exempt from a particular requirement. Should small generators or facilities be given such exemptions, and are each of the thresholds set at an appropriate level?

The General Assembly directed the board to consider nine factors in developing the regulations. The board would like the public to suggest any ways the regulations could better address the following nine factors:

1. An assessment of the annual need for the disposal of infectious waste generated in the Commonwealth.

2. Means of reducing the volume of infectious waste or similar wastes containing or producing toxic substances disposed of in the Commonwealth.

3. The availability and feasibility of methods of

disposing of infectious waste other than incineration.

4. Criteria for siting infectious waste incinerators in order to safeguard public health and safety to maximum extent.

5. Standards for assessing the economic feasibility of proposed commercial infectious waste incinerators.

6. The propriety of establishing different criteria and procedures for the permitting of incinerators disposing of infectious wastes generated on-site or off-site.

7. The economic demand for the importation of infectious waste generated outside the Commonwealth to existing and future commercial infectious waste incinerators located in the Commonwealth, and an estimate of the fair share of infectious capacity to be allowed for infectious waste generated outside the Commonwealth.

8. The impact of the Clean Air Act (42 U.S.C § 1857 et seq.), as amended by the 1990 amendments (P.L. 101-549) on the incineration of infectious waste by hospitals.

9. The impact of reports by the Environmental Protection Agency to the Congress of the United States regarding the Medical Waste Tracking Act of 1988 (P.L. 100-582).

In addition to the issues and factors listed above, the board welcomes comments on all parts of the proposed regulations. In order to be most helpful, comments need to be very specific and make detailed suggestions for alternative requirements or wording. Support data and related information, of which the board may not be aware, will greatly aid the board in reaching a decision.

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

Written comments may be submitted until 5 p.m. on January 17, 1994, to the Department of Environmental Quality, 101 North 14th Street, 11th Floor, Richmond, Virginia 23219. Copies of the proposed new regulations are available by writing the Department of Environmental Quality.

Contact: Robert G. Wickline, Director of Research, ORPD, Department of Environmental Quality, 101 N. 14th St., 11th Floor, Richmond, VA 23219, telephone (804) 225-2667.

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January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, 4900 Cox Road, Board Room, Innsbrook, Glen Allen, Virginia.

January 31, 1994 – Written comments may be submitted until 4 p.m. on this date.

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 amend regulations entitled: **VR 672-01-1:1. Public Participation Guidelines.** Section 9-6.14:7.1 of the Administrative Process Act (APA) requires each agency to develop, adopt and use public participation guidelines for soliciting the input of interested persons in the formation and development of its regulations. Such guidelines shall not only be used prior to the formation and drafting of proposed regulations, but shall also be used during the entire formation, promulgation and final adoption process. Furthermore, § 10.1-1402 of the Virginia Waste Management Act authorizes the Virginia Waste Management Board to issue regulations as may be necessary to carry out its powers and duties required by the Act and consistent with the federal statutes and regulations.

This action is necessary to replace existing emergency Public Participation Guidelines with permanent guidelines which will comply with new provisions of the APA enacted by the 1993 General Assembly. These proposed amendments will establish, in regulation, various provisions to ensure that interested persons have the necessary information to comment in a meaningful, timely fashion during all phases of the regulatory process. These proposed amendments are consistent with those of the other agencies within the Natural Resources Secretariat.

The proposed amendments contain a number of new provisions. Specifically, the proposal includes a definition for "participatory approach" which means the methods for the use of an ad hoc advisory group or panel, standing advisory committee, consultation with groups or individuals or a combination of methods; requires the use of the participatory approach upon receipt of written requests from five persons during the associated comment period; expands the board's procedures for establishing and maintaining lists of persons expressing an interest in the adoption, amendment or repeal of regulations; expands the information required in the Notice of Intended Regulatory Action to include a description of the subject matter and intent of the planned regulation and to include a statement inviting comment on whether the agency should use the participatory approach to assist in regulation development; expands the information required in the Notice of Public Comment Period to include the identity of localities affected by the proposed regulation and to include a statement on the rationale or justification for the new provisions of the regulation from the standpoint of the public's health, safety or welfare; and requires that a draft summary of comments be sent to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

Statutory Authority: §§ 9-6.14:7.1 and 10.1-1402 of the Code of Virginia.

Contact: William F. Gilley, Waste Division, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240, telephone (804) 225-3966.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

January 27, 1994 - 8:30 a.m. – Open Meeting
January 28, 1994 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad St., Conference Room 3, Richmond, Virginia.

A general board meeting to conduct regulatory review and final examination review.

Contact: David E. Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA, telephone (804) 367-8595.

STATE WATER CONTROL BOARD

January 20, 1994 - 7 p.m. – Open Meeting
University of Virginia Southwest Center, Highway 19N., Abingdon, Virginia.

The purpose of the meeting is to receive comments and views from interested persons on the proposed repeal of the existing Tennessee-Big Sandy River Basin Water Quality Management Plan and the adoption of a new, updated plan for the basin.

Contact: Ronald D. Sexton, Department of Environmental Quality, Water Division, P. O. Box 888, Abingdon, VA 24210, telephone (703) 676-5507

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January 5, 1994 - 2 p.m. – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 10, 1994 - 2 p.m. – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

January 11, 1994 - 2 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-16. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Heavy Manufacturing Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from heavy manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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January 5, 1994 - 2 p.m. – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 10, 1994 - 2 p.m. – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

January 11, 1994 - 2 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – 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 State Water Control Board intends to adopt regulations entitled: **VR 680-14-17. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity from Light Manufacturing Facilities.** The purpose of the

proposed regulation is to authorize storm water discharges associated with industrial activity from light manufacturing facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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January 5, 1994 - 2 p.m. – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 10, 1994 - 2 p.m. – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

January 11, 1994 - 2 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-18. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges Associated with Industrial Activity from Transportation Facilities, Landfills, Land Application Sites and Open Dumps, and Materials Recycling Facilities, and Steam Electric Power Generating Facilities.** The purpose of the proposed regulation is to authorize storm water discharges associated with industrial activity from transportation facilities, landfills, land application sites and open dumps, materials recycling facilities and steam electric power generating facilities through the development and issuance of a VPDES general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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January 5, 1994 - 2 p.m. – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 10, 1994 - 2 p.m. – Public Hearing
Prince William County Administration Center, One County Complex, 4850 Davis Ford Road, McCoart Building, Board Chambers, Prince William, Virginia.

January 11, 1994 - 2 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 26, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-19. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Storm Water Discharges from Construction Sites.** The purpose of the proposed regulation is to authorize storm water discharges from construction sites. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings ar

being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 26, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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January 18, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-20. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Nonmetallic Mineral Mining.** The purpose of the proposed regulation is to adopt a general VPDES permit for the discharges from establishments primarily engaged in mining or quarrying, developing mines or exploring for nonmetallic minerals, other than fuels. A question and answer session will be held prior to the informational proceeding (public hearing) from 1:30 to 2 p.m. for interested persons to learn more about the regulation and ask questions of the staff. The meeting is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 9, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any person interested in reviewing these materials should contact Cindy Berndt, (804) 527-5158, at the address listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 18, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Richard Ayers, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5059.

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January 5, 1994 - 7 p.m. – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 11, 1994 - 7 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 13, 1994 - 7 p.m. – Public Hearing
Rockingham County Administration Center, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

January 28, 1994 – 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 State Water Control Board intends to adopt regulations entitled: **VR 680-14-22. Virginia Pollution Abatement General Permit for Intensified Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.** The purpose of the proposed regulation is to authorize pollutant management activities at intensified animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 28, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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January 5, 1994 - 7 p.m. – Public Hearing
James City County Board of Supervisor's Room, 101 C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 11, 1994 - 7 p.m. – Public Hearing
Municipal Office Building, 150 East Monroe Street, Multi-Purpose Room/Council Chambers, Wytheville, Virginia.

January 13, 1994 - 7 p.m. – Public Hearing
Rockingham County Administration Center, 20 East Gay Street, Board of Supervisors Room, Harrisonburg, Virginia.

January 28, 1994 – 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 State Water Control Board intends to adopt regulations entitled: **VR 680-14-23. Virginia Pollution Abatement General Permit for Concentrated Animal Feeding Operations of Swine, Dairy, and Slaughter and Feeder Cattle.** The purpose of the proposed regulation is to authorize pollutant management activities at concentrated animal feeding operations of swine, dairy, and slaughter and feeder cattle through the adoption of a Virginia Pollution Abatement general permit. A question and answer session will be held one-half hour prior to each of the informational proceedings at the same location. The informational proceedings are being held at facilities believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, at the address below, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, December 27, 1993. Analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed regulation have been completed. Any persons interested in reviewing these materials should notify the contact person listed below.

Statutory Authority: § 62.1-44.15(10) of the Code of Virginia.

Written comments may be submitted until January 28, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Catherine Boatwright, Department of Environmental Quality, Water Division, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5316.

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January 6, 1994 - 7 p.m. – Public Hearing
Department of Environmental Quality, Innsbrook Office, 4900 Cox Road, Glen Allen, Virginia.

January 31, 1994 – Written comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to amend regulations entitled: **VR 680-41-01:1. Public Participation Guidelines.** The purpose of the proposed amendments is to replace existing emergency public participation guidelines with permanent guidelines in compliance with the Administrative Process Act.

The board has conducted analyses related to the basis, purpose, substance, issues and estimated impacts of the proposed amendments. Any persons interested in reviewing these materials should contact Cindy Berndt at the Department of Environmental Quality, Office of Regulatory Service, P. O. Box 11143, Richmond, VA 23230. The meeting is being held at a facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Ms. Doneva Dalton, Office of Regulatory Services, P. O. Box 11143, Richmond, VA 23230, (804) 527-5162 or TDD (804) 527-4261. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than December 27, 1993.

Statutory Authority: §§ 9-6.14:7.1 and 62.1-44.15 of the Code of Virginia.

Written comments may be submitted until 4 p.m. on January 31, 1994, to Ms. Doneva Dalton, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230.

Contact: Cindy Berndt, DEQ, P.O Box 11143, Richmond, VA 23230, telephone (804) 527-5158.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

January 31, 1994 – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Waterworks and Wastewater Works Operators intends to **repeal** regulations entitled: **VR 675-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 675-01-01:1. Public Participation Guidelines.** The purpose of the proposed regulations is to implement the requirements of the Administrative Process (APA) and the legislative changes to the APA made by the 1993 General Assembly by establishing regulatory board (agency) procedures for soliciting, receiving and considering input from interested parties in the formulation, adoption and amendments to new and existing regulations governing the licensure of waterworks and wastewater works operators in Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-201 of the Code of Virginia.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8534.

† **February 9, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.

A meeting to conduct regular board business and any other matters which may require board action.

Contact: Geralde W. Morgan, Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF YOUTH AND FAMILY SERVICES

January 13, 1994 - 8:30 a.m. – Open Meeting
700 Centre Building, 7th and Franklin Streets, 4th Floor, Richmond, Virginia.

Committee meetings will begin at 8:30, and a general meeting will begin at 10 a.m. to review programs recommended for certification or probation, to consider adoption of draft policies, and to discuss other matters that may come before the board.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

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† **January 13, 1994 - 3 p.m.** – Public Hearing
Department of Youth and Family Services, Board Room, 700 Centre Building, 7th and Franklin Streets, Richmond, Virginia.

February 28, 1994 – 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 Youth and Family Services intends to adopt regulations entitled: **VR 690-05-001. Standards Governing Research on Clients and Records of the Department.** These regulations set forth the process for receiving, reviewing, approving and monitoring proposals for research on clients and records of the Department of Youth and Family Services, including provision for a Human Research Committee.

Statutory Authority: § 66-10.1 of the Code of Virginia.

Contact: Donald R. Carignan, Policy Coordinator, P. O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

CHRONOLOGICAL LIST

OPEN MEETINGS

January 4, 1994
† Environmental Quality, Department of
Funeral Directors and Embalmers, Board of

January 5
Geology, Board for
Real Estate Appraiser Board
- Complaints Committee

January 5
† Medicine, Board of
† Optometry, Board of

January 6
Emergency Planning Committee, Local - Chesterfield County

January 7

† Prevention and Early Intervention Steering Committee, Comprehensive Services
† Hopewell Industrial Safety Council
Medical Assistance Services, Department of
- Drug Utilization Review Board

January 10
† ASAP Policy Board - Valley
Cosmetology, Board for
† Hearing Aid Specialists, Board for
† Labor and Industry, Department of
- Apprenticeship Council
- Safety Health Codes Board
† Local Government, Commission on

January 11
† Higher Education for Virginia, State Council of
Resources Authority, Virginia

January 12
† Corrections, Board of
Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels
† Labor and Industry, Department of
- Apprenticeship Council
- Safety and Health Codes Board
† Medicine, Board of
† Motor Vehicles, Department of
- Medical Advisory Board
† Optometry, Board of
Professional Soil Scientists, Board for

Winegrowers Advisory Board, Virginia
† Virginia Racing Commission

January 13
Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Child Day-Care Council
† Corrections, Board of
- Liaison Committee
Forestry, Board of
† Labor and Industry, Department of
- Apprenticeship Council
- Safety and Health Codes Board
† Medicine, Board of
- Physical Therapy, Advisory Board on
† Pharmacy, Board of
Youth and Family Services, Board of
† Telecommunications Board, Virginia Public

January 14
Agriculture and Consumer Services, Department of
- Pesticide Control Board
Medicine, Board of
- Ad Hoc Committee on HIV

January 14
† Child Day-Care Council

January 17
† Longwood College
- Academic Affairs Committee
- Student Affairs Committee

January 18
Interagency Coordinating Council on Early Intervention, Virginia
† Hazardous Materials Training Committee
† Pharmacy, Board of
† Psychology, Board of
- Credentials Committee
Real Estate Appraiser Board
† Transportation Safety Board, Virginia

January 19
† Medicine, Board of
Mental Health, Mental Retardation and Substance Abuse Services Board, State

January 20
† Health, Department of
- Waterworks Advisory Committee
Motor Vehicles, Department of
- Motor Vehicle Dealers Advisory Board
Water Control Board, State

January 21
† Prevention and Early Intervention Steering Committee, Comprehensive Services

January 22
Visually Handicapped, Department for
- Advisory Committee on Services

January 24
Library Board
- Archives and Record Management Committee
- Public Library Development Committee
† Nursing, Board of

January 25
† Health Services Cost Review Council, Virginia
† Medicine, Board of
† Nursing, Board of

January 26
† Nursing, Board of
† Sewage Handling and Disposal Appeals Review Board

January 27
Education, Board of
† Nursing, Board of
Waste Management Facility Operators, Board for

January 28
† Medicine, Board of
- Informal Conference Committee
Waste Management Facility Operators, Board for

February 1
† Hopewell Industrial Safety Council

February 2
Mines, Minerals and Energy, Department of

February 4
† Opticians, Board for

February 9
Resources Authority, Virginia
† Waterworks and Wastewater Works Operators, Board for

February 12
Virginia Military Institute
Visitors, Board of

February 24
Education, Board of

PUBLIC HEARINGS

January 5, 1994
Water Control Board, State

January 6
Air Pollution Control Board, State
Chesapeake Bay Local Assistance Board
Conservation and Recreation, Board of

Conservation and Recreation, Department of
Environmental Quality, Department of
Game and Inland Fisheries, Department of
Historic Resources, Board of
Historic Resources, Department of
Marine Resources Commission
Soil and Water Conservation Board, Virginia
Waste Management Board, Virginia
Water Control Board, State

January 10
Taxation, Department of
Water Control Board, State

January 12
† Social Services, Department of

January 13
† Youth and Familiy Services, Department of

January 27
† Labor and Industry, Department of
- Apprenticeship Council

February 1
† Air Pollution Control Board, State

February 2
† Labor and Industry, Department of
- Safety and Health Codes Board

February 3
† Air Pollution Control Board, State

February 8
† Air Pollution Control Board, State

February 9
† Air Pollution Control Board, State
† Virginia Racing Commission

February 10
† Air Pollution Control Board, State

April 6
† Criminal Justice Services, Department of

Calendar of Events