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NOTICES OF INTENDED REGULATORY ACTION

Symbol Key †

† Indicates entries since last publication of the Virginia Register



DEPARTMENT FOR THE AGING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department for the Aging intends to consider repealing regulations entitled: **VR 110-01-01. 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 department plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 2.1-373 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until April 7, 1994.

Contact: Bill Fascitelli, Senior Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA 23219-2327, telephone (804) 225-2852 or toll-free 1-800-552-4464.

V.A.R. Doc. No. R94-596; Filed February 15, 1994, 3:31 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 Aging intends to consider promulgating regulations entitled: **VR 110-01-01:1. 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 department plans to adopt without changing the emergency regulations currently in effect.

Statutory Authority: §§ 2.1-373 and 9-6.14:7.1 of the Code of Virginia.

Written comments may be submitted until April 7, 1994.

Contact: Bill Fascitelli, Senior Planner, Department for the Aging, 700 E. Franklin St., 10th Floor, Richmond, VA

23219-2327, telephone (804) 225-2852 or toll-free 1-800-552-4464.

V.A.R. Doc. No. R94-595; Filed February 15, 1994, 3:31 p.m.

VIRGINIA EMPLOYMENT COMMISSION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-1. Definitions and General Provisions**. The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

V.A.R. Doc. No. R94-632; Filed February 28, 1994, 12:32 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-2. Unemployment Taxes**. The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

V.A.R. Doc. No. R94-633; Filed February 28, 1994, 12:32 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's

Notices of Intended Regulatory Action

public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-3. Benefits.** The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

VA.R. Doc. No. R94-634; Filed February 28, 1994, 12:32 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Employment Commission intends to consider amending regulations entitled: **VR 300-01-4. Adjudication.** The purpose of the proposed action is to conduct the annual review of existing regulations. The agency intends to hold a public hearing after publication of the proposed amendments.

Statutory Authority: § 60.2-111 of the Code of Virginia.

Written comments may be submitted until April 21, 1994.

Contact: Michael P. Maddox, Legislative Analyst, Virginia Employment Commission, P.O. Box 1358, Richmond, VA 23211, telephone (804) 786-1070.

VA.R. Doc. No. R94-635; Filed February 28, 1994, 12:32 p.m.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Department of Environmental Quality intends to consider promulgating regulations entitled: **VR 304-03-01. Regulation for the Early Retirement of Older Motor Vehicles.** The purpose of the proposed action is to develop procedures for the early, voluntary retirement of older motor vehicles in order to reduce mobile source air pollution in exchange for a voucher worth cash or trade-in value. The regulation will contain eligibility criteria, processing requirements and procedures for establishing mobile source air pollution reduction credits which can be banked or traded.

Public Meeting: A public meeting will be held in the Board Room of the Virginia Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia, at 7 p.m. on March 30, 1994, to discuss the

intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

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 on the accessibility of the facility should contact Ms. Doneva Dalton at the Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than March 15, 1994.

Ad Hoc Advisory Group: The department will form an ad hoc advisory group to assist in the development of the regulation. If you desire to be on the group, notify the agency contact in writing by the close of business on April 22, 1994, and provide your name, address, phone number and the organization you represent (if any). Notification of the composition of the ad hoc advisory group will be sent to all applicants by May 13, 1994. If you are interested in being on the group, you are encouraged to attend the public meeting. The primary function of the group is to develop a recommended regulation for department consideration through the collaborative approach of regulatory negotiation and consensus to the extent permitted by law.

Public Hearing Plans: The department will hold at least one public hearing to provide opportunity for public comment on any regulation drafted pursuant to this notice.

Need: The National Ambient Air Quality Standard for ozone is 0.12 parts per million (ppm) and was established by the U.S. Environmental Protection Agency (EPA) to protect the health of the general public with an adequate margin of safety. Ozone is formed when volatile organic compounds and nitrogen oxides in the ambient air react together in the presence of sunlight. When concentrations of ozone in the ambient air exceed the EPA standard the area is considered to be out of compliance and is classified as "nonattainment." Numerous counties and cities within the Northern Virginia, Richmond, and Hampton Roads areas have been identified as ozone nonattainment areas according to new provisions of the 1990 Clean Air Act (Act); therefore, over 3.5 million Virginia citizens are being exposed to air quality that does not meet the federal health standard for ozone.

Air pollution from vehicles contributes as much as half of the total man-made pollution which forms ozone. A disproportionate amount of that pollution comes from older cars which were either not designed to burn fuel efficiently or have deteriorated to the point that they pollute heavily. According to the U.S. Congress Office of Technology Assessment, cars of 1971 or earlier vintage made up only 3.4% of the national fleet in 1990 and were driven only 2.0% of the miles. EPA estimates they created at least 6.0% of the hydrocarbon emissions, 7.5% of the

Notices of Intended Regulatory Action

carbon monoxide, and 4.7% of nitrogen oxides. They also have poor fuel economy.

In Virginia's nonattainment areas (currently Northern Virginia, Richmond and Hampton Roads), the percentage of pre-1972 cars ranges between 3.4% and 4.4% of the total vehicle population according to 1991 data from the Department of Motor Vehicles. These vehicles produce 10% to 12% of the total VOC emissions from cars and trucks weighing up to 8,500 pounds. Pre-1981 model years, ranging from 21% to 27% of the vehicle population, produce 45% to 50% of the total VOC emissions. The percentage of older cars in the vehicle population and the pollution from those cars will decrease annually as cars are retired naturally. Estimates are that approximately 20% of the pre-1981 vehicles are retired by their owners each year.

Vehicle retirement programs remove these vehicles from service, and destroy the emission system components and engine, by offering to purchase them from willing owners. The programs reduce pollution by taking these older, higher-polluting vehicles off the road sooner than they would normally have been retired. The benefits in pollution reduction and fuel savings are immediate; there may be safety benefits as well. However, the benefits are short-lived because the vehicle is being removed from service only a few years sooner, on average, than would have occurred normally. There is also the question of what amount of driving is then transferred to another vehicle and how much net pollution reduction results from replacing one vehicle with another.

In order for a motor vehicle retirement program to demonstrate an air pollution reduction benefit, it must be carefully constructed to target high-polluting vehicles which are in regular operation. Removing vehicles from operation which are not operated regularly does little to reduce pollution and is therefore not cost effective. Further, removal of vehicles in geographic areas which do not have significant air pollution problems is also not cost effective.

Alternatives:

1. Draft a new regulation according to the requirements in the 1993 Acts of Assembly which will provide for implementation of a motor vehicle retirement or "scrappage" program which assigns pollution reduction credit value based on EPA guidance.
2. Draft a new regulation according to the requirements in the 1993 Acts of Assembly which will provide for implementation of a motor vehicle retirement or "scrappage" program which assigns pollution reduction credit value based on calculations from actual emissions testing of vehicles retired and replacement vehicles.
3. Take no action to draft a regulation, which would

be contrary to the intent of the 1993 Acts of Assembly.

Costs and benefits: The department is soliciting comments on the costs and benefits of the alternatives stated above or other alternatives.

Applicable Federal Requirements: The 1990 amendments to the Clean Air Act represent the most comprehensive piece of clean air legislation ever enacted and for the first time delineates nonattainment areas as to the severity of the pollution problem. Nonattainment areas are now classified as marginal, moderate, serious, severe and extreme. Marginal areas are subject to the least stringent requirements and each subsequent classification is subject to successively more stringent control measures. Areas with higher classifications of nonattainment must meet the requirements of all the areas in lower classifications. Virginia's nonattainment areas are classified as marginal for the Hampton Roads Nonattainment Area, moderate for the Richmond Nonattainment Area, and serious for the Northern Virginia Nonattainment Area.

Virginia must submit an air quality plan for each of these areas which shows how, and when, we will go about attaining and maintaining these air quality standards. The plans contain multiple control strategies and also must contain contingency measures should the strategies prove insufficient. Realistically, it is also important to prevent areas with relatively clean air from becoming nonattainment areas. Voluntary, proactive programs such as a motor vehicle retirement program could prove beneficial in the short term in reducing pollution generated by motor vehicles.

Some federal guidance exists for designing such programs; however, there is no federal law or regulation on this specific subject. Additional federal guidance exists regarding the generation, banking and trading of actual pollution reductions, called "pollution credits."

Statutory Authority: §§ 46.2-1802, 46.2-1804, and 46.2-1805 of the Code of Virginia.

Written comments may be submitted until the close of business on April 22, 1994, to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: David J. Kinsey, Policy Analyst, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4432.

VA.R. Doc. No. R94-567; Filed February 2, 1994, 10:04 a.m.

Notices of Intended Regulatory Action

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 355-33-100 (formerly VR 355-33-01). Rules and Regulations for the Licensure of Nursing Homes in Virginia.** The purpose of the proposed action is to review and update the existing regulations governing the activities and services of nursing homes and include criminal record checks for employees in keeping with § 32.1-126.01 of the Code of Virginia and the rights and responsibilities of patient discharge and transfer in keeping with § 32.1-138.1 of the Code of Virginia. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12, 32.1-127, 32.1-126.01, and 32.1-138.1 of the Code of Virginia.

Written comments may be submitted until April 29, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Connie Kane, Long-Term Care Service Director, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100.

VA.R. Doc. No. R94-651; Filed March 2, 1994, 10:35 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 355-33-200 (formerly VR 355-33-02). Regulations for the Licensure of Home Health Agencies.** The purpose of the proposed action is to amend the existing home health agency regulations to require each home health agency to develop and implement policies and procedures requiring criminal records checks for employees in keeping with § 32.1-162.9:1 of the Code of Virginia. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12, 32.1-162.12, and 32.1-162.9:1 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2100.

VA.R. Doc. No. R94-653; Filed March 2, 1994, 10:35 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 355-33-300 (formerly VR 355-33-03). Regulations for the Licensure of Hospices.** The purpose of the proposed action is to amend existing hospice regulations to require each hospice to develop and implement policies and procedures requiring criminal records checks for employees in keeping with § 32.1-162.9:1 of the Code of Virginia. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12, 32.1-162.5, and 32.1-162.9:1 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102.

VA.R. Doc. No. R94-652; Filed March 2, 1994, 10:35 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 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.** The purpose of the proposed action is to amend the existing hospital licensure regulations to:

A. Establish designated levels of care, with attendant standards, for the provision of neonatal services in licensed hospitals within the Commonwealth.

B. Develop a policy that prohibits offering or paying remuneration to any practitioner for referring patients to the hospital in keeping with § 32.1-135.2 of the Code of Virginia.

C. Require each hospital to develop a protocol to disseminate patient rights to patients in keeping with § 32.1-127 of the Code of Virginia.

D. Require that each licensed hospital develop and implement a protocol requiring written discharge plans for identified, substance abusing, postpartum women and their infants.

E. Include regulations that require that each licensed hospital in the Commonwealth establish a routine contact protocol to ensure that families of suitable organ and

Notices of Intended Regulatory Action

tissue donors are offered the opportunity to consider organ, tissue and eye donation.

A public hearing will be held in the future at an announced time and location.

Statutory Authority: §§ 32.1-12, 32.1-127, and 32.1-135.2 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Stephanie A. Sivert, Director, Division of Acute Care Services, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2104.

VA.R. Doc. No. R94-654; March 2, 1994, 10:35 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 promulgating regulations entitled: **VR 355-33-800. Rules and Regulations for the Licensure of Outpatient Maternity Hospitals.** The purpose of the proposed action is to promulgate regulations governing the activities and services of outpatient maternity hospitals. This action will establish outpatient maternity hospitals under a separate set of regulations. A public hearing will be held in the future at an announced location and time.

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Written comments may be submitted until April 21, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 West Broad Street, Suite 216, Richmond, Virginia 23230.

Contact: Carrie Eddy, Policy Analyst, Department of Health, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230, telephone (804) 367-2102.

VA.R. Doc. No. R94-657; Filed March 2, 1994, 10:36 a.m.

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Virginia Health Services Cost Review Council intends to consider amending regulations entitled: **VR 370-01-003. Virginia Health Services Cost Review Council Patient Level Data System.**

The purpose of the proposed action is to amend regulations regarding patient level data which must be submitted by acute care hospitals for inpatient discharges and by the Virginia Department of Medical Assistance Services and the Virginia Department of Health for outpatient care data. A public hearing will be held at noon on June 28, 1994, at Blue Cross/Blue Shield of Virginia, 2015 Staples Mill Road, Richmond, Virginia.

Statutory Authority: §§ 9-164 and 9-166.5 of the Code of Virginia.

Written comments may be submitted until April 22, 1994.

Contact: John A. Rupp, Executive Director, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

VA.R. Doc. No. R94-649; Filed March 1, 1994, 3:37 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services, and VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care: Physical Therapy and Related Services.** The purpose of the proposed action is to amend existing regulations to establish different requirements and clarify documentation requirements for general physical rehabilitation and intensive rehabilitative services. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until March 23, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 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.

VA.R. Doc. No. R94-525; Filed January 20, 1994, 3:16 p.m.

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider promulgating regulations entitled: **VR 460-04-8.16. DMAS-122 Adjustments.** The purpose of the proposed regulation is to

Notices of Intended Regulatory Action

establish regulatory authority for guidelines for the process of adjusting the amount due from Medicaid recipients in long-term care facilities (the DMAS-122 Adjustment Process). This agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until April 20, 1994, to Mary Chiles, Manager, Division of Quality Care Assurance, Department of Medical Assistance Services, 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.

V.A.R. Doc. No. R94-621; Filed February 23, 1994, 12:47 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Board of Medical Assistance Services intends to consider amending regulations entitled: **Amount, Duration, and Scope of Services: Prescribed Drugs: Coverage of Certain Over-the-Counter Drugs.** The purpose of the proposed action is to allow coverage of certain over-the-counter (OTC) medications as less expensive alternatives to legend drugs. The agency does not intend to hold public hearings on this issue.

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

Written comments may be submitted until March 23, 1994, to Marianne Rollings, Division of Quality Care Assurance, Department of Medical Assistance Services, 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.

V.A.R. Doc. No. R94-536; Filed February 1, 1994, 9:09 a.m.

BOARDS OF NURSING AND MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with their public participation guidelines that the Board of Nursing and the Board of Medicine intend to consider amending regulations entitled: **VR 495-02-1 and VR 465-07-1. Regulations Governing the Licensure of Nurse Practitioners.** The purpose of the proposed action is to conduct a biennial review of regulations which will include consideration of recommendations of several studies conducted in the state

within the past several years. A public hearing will be held on any proposed regulations developed as a result of the consideration described in the purpose of this intended regulatory action.

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Written comments may be submitted until April 15, 1994.

Contact: Corinne F. Dorsey, R.N., Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

V.A.R. Doc. No. R94-587; Filed February 2, 1994, 3:39 p.m.

COMMONWEALTH TRANSPORTATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-12. Hauling Permit Manual.** The purpose of the proposed action is to revise and streamline VDOT's Hauling Permit Manual. The update/revision will include travel regulations, including overweight, overheight, and overwidth restrictions. The agency does not intend to hold a public hearing on the proposed regulation after publication of the proposed regulation.

Statutory Authority: §§ 33.1-12 and 46.2-1139 of the Code of Virginia.

Written comments may be submitted until March 23, 1994.

Contact: J.R. Hess, Hauling Permit Supervisor, Department of Transportation, Maintenance Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 371-8033.

V.A.R. Doc. No. R94-534; Filed January 31, 1994, 2:09 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with this agency's public participation guidelines that the Commonwealth Transportation Board intends to consider amending regulations entitled: **VR 385-01-16. Land Use Permit Manual.** The purpose of the proposed action is to revise the Land Use Permit Manual in terminology and nomenclature. The agency does not intend to hold a public hearing on the proposed regulation after publication of the proposed regulation.

Statutory Authority: §§ 33.1-12 (3), 33.1-197 and 33.1-198 of the Code of Virginia.

Written comments may be submitted until March 23, 1994.

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Contact: Jim Cline, Land Use Permit Supervisor, Department of Transportation, Maintenance Division, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-4271.

V.A.R. Doc. No. R94-535; Filed January 31, 1994, 2:09 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 amending regulations entitled: **VR 680-21-01. Water Quality Standards.** The purpose of the proposed action is to consider modifying VR 680-21-01 3 C 1 of the Antidegradation Policy to increase the participation of local governments in the nomination and designation process for exceptional waters. The State Water Control Board intends to consider amending the regulation to offer local governments the opportunity to determine if a proposed exceptional waters nomination is consistent with local comprehensive planning as part of the process.

Basis and statutory authority: Section 62.1-44.15(a) of the Code of Virginia authorizes the board to establish such standards of quality and policies for any state waters consistent with the general policy of the State Water Control Law, and to modify, amend, or cancel any such standards or policies established and to take all appropriate steps to prevent quality alteration contrary to the public interest or to standards or policies thus established.

Estimated impact: Impacts resulting from designations of exceptional waters will be primarily upon the local governments in the area where the exceptional waters are located. No new or increased VPDES discharges will be allowed into these exceptional waters.

Alternatives: Alternatives under consideration include whether the board should propose amendments to VR 680-21-01 3 C 1 regarding the role of local governments in the designation procedures for exceptional waters or leave the section unchanged.

Comments: The board seeks oral and written comments from interested persons on the intended regulatory action and on the costs and benefits of stated alternatives. Also, the board seeks comment on whether the agency should form an ad hoc advisory group, utilize a standing advisory committee, or consult with groups or individuals to assist in the drafting and formation of a proposal. In addition, the board's staff will hold public meetings at 7 p.m. on Wednesday, March 23, 1994, in the Board Room, Department of Environmental Quality, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia, and at 7 p.m. on Thursday, March 24, 1994, in the Roanoke County Board of Supervisors Meeting Room, First Floor, 5204

Bernard Drive, Roanoke, Virginia, to receive views and comments and to answer questions of the public.

Accessibility to Persons with Disabilities: The meetings 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, Office of Regulatory Services, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Tuesday, March 1, 1994.

Intent to Hold an Informational Proceeding or Public Hearing: The board intends to hold an informational proceeding (informal hearing) on the proposed amendment after it 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 an evidential proceeding (formal hearing) on the proposal after it is published in The Register of Regulations.

Statutory Authority: § 62.1-44.15(3a) of the Code of Virginia.

Written comments may be submitted until 4 p.m. on April 5, 1994, to Doneva Dalton, Department of Environmental Quality, P.O. Box 11143, Richmond, Virginia 23230.

Contact: Jean Gregory, Department of Environmental Quality, P.O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

V.A.R. Doc. No. R94-526; Filed January 26, 1994, 1:04 p.m.

PROPOSED REGULATIONS

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.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

Title of Regulation: VR 230-01-004. Regulations for Human Subject Research.

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

Public Hearing Date: April 13, 1994 - 10 a.m.

Written comments may be submitted until May 23, 1994.

(See Calendar of Events section for additional information)

Basis: These regulations are promulgated under the authority of § 53.1-5.1 of the Code of Virginia which states that the Board of Corrections 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.

Also, § 53.1-5 of the Code of Virginia charges the board with developing, adopting, and promulgating rules and regulations as may be necessary to carry out laws of the Commonwealth administered by the Director or the Department of Corrections.

Purpose: The purpose of these regulations is to carry out the provisions of § 53.1-5.1 and Chapter 5.1 (§ 32.1-162.16 et seq.). Generally, these Code sections require the establishment of human research review committees, and require such committees to submit to the Governor, the General Assembly, and the director or his designee at least annually a report on the human research projects reviewed and approved by the committees. The Code also requires the committees to report any significant deviations from the proposals as approved. Thus these regulations set forth rules for managing these requirements.

Substance: Part I of these regulations states definitions for key terms, identifies the applicability, and articulates the general policy of the regulations.

Part II outlines requirements for the human research review committees. Rules are specified for the certification process, the composition of the committees, the elements of each committee's review process, the kinds of research exempt from committee review, expedited review procedures for certain kinds of research involving no more than minimal risk, informed consent, committee records,

and mandatory reporting requirements.

Part III differentiates the roles of the department, the director, and the board for implementing the regulations.

Part IV of the regulations considers the applicability of relevant state and federal policies for human subject research conducted in the department.

Issues: The establishment of these regulations should prove advantageous for the department, human research participants and researchers. The formulation of human research review committees will create organized, efficient, and fair mechanisms for the review and approval of proposed human subject research. The requirements for informed consent and the criteria for committee review of research proposals serve to protect human research participants. The regulations also minimize time and redundant review of research proposals by establishing rules for expedited review procedures when research involves minimal risk and by outlining requirements for joint review for when cooperating organizational units conduct research on participants. Moreover, the regulations specify those kinds of research which are completely exempt from committee review. Finally, the requirements for maintenance of committee records and mandatory reporting should contribute to a statewide awareness of research activities and establish a system for organizing and studying past research efforts.

The regulations should not pose significant disadvantages to the department, human participants, or researchers. The department may incur some burden in terms of extra staff time allotted to organizing human research committees, reviewing research proposals, and preparing annual reports. Researchers shall be required to submit all required information as specified for research proposals.

Impact: The projected number of individuals impacted by these regulations include all parties interested in submitting proposals for human subject research to the department, all clients and employees of the department who consent to participate in research, and each organizational unit of the department which conducts or which proposes to conduct or authorize research which uses human participants.

Costs should not increase for the Board of Corrections or Department of Corrections in implementing these regulations.

Summary:

The Human Subject Research Regulations establish

under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162.16 et seq. of the Code of Virginia. In accordance with the legislation, the regulations define requirements for obtaining informed consent and require the establishment of human research review committees which review and approve all human research activities. These regulations apply to the Department of Corrections, and to any facility, program or organization owned, operated, funded, or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants. Human research participants may be either employees or clients of the department.

VR 230-01-004. Regulations for Human Subject Research.

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:

"Board" means the Board of Corrections.

"Department" means the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Human research" means any systematic investigation utilizing human subjects which may expose such human subjects to physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted therapeutic methods appropriate to meet the subjects' needs. The term does not include:

1. The conduct of biological studies exclusively utilizing tissue or fluids after their removal or withdrawal from a human subject in the course of standard medical practice;
2. Epidemiological investigations; or
3. 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 disabled or physically or mentally incapacitated or to improve the quality of the subject's life.

"Legally authorized representative" means (i) the parent or parents having custody of a prospective subject, (ii) the legal guardian of a prospective subject, or (iii) any person or judicial body authorized by law or regulation to consent on behalf of a prospective subject to such subject's participation in the particular human research. For the

purposes of this definition, any person authorized by law or regulation to consent on behalf of a prospective participant to his participation in the particular human research shall include 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, organizational unit or agency conducting the human research and shall not be authorized to consent to nontherapeutic medical research. No official or employee of the organizational unit 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 or the human subject.

"Participant" or "human participant" means a living individual about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. "Intervention" includes both physical procedures by which data are gathered and manipulations of the participant or participant's environment that are performed for research purposes. "Interaction" includes communication or interpersonal contact between investigator and participant. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public. Private information must be individually identifiable in order for obtaining the information to constitute research involving human participants.

"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 appropriate analytical techniques to the 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 data, and preparation of a report of findings.

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"Voluntary informed consent" means the knowing consent of an individual so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress or other form of constraint or coercion. With regard to the conduct of human research, the basic elements of information necessary to such voluntary informed consent shall include:

1. A fair explanation to the individual of any procedures to be followed and their purposes, including identification of any procedures which are experimental;
2. A description of any attendant discomforts and risks reasonably to be expected;
3. A description of any benefits reasonably to be expected;
4. A disclosure of any appropriate alternative procedures that might be advantageous for the individual;
5. An offer to answer any inquiries by the individual concerning the procedure; and
6. An instruction that the individual is free to withdraw his voluntary informed consent and to discontinue participation in the human research at any time without prejudice to him.

§ 1.2. Applicability.

These regulations shall apply to the Department of Corrections, and to any facility, program or organization owned, operated, funded, or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants.

§ 1.3. Policy.

A. No human research may be conducted without informing the participant or his legally authorized representative in writing of the risks, procedures, and discomforts of the research. The voluntary informed consent of the participant or his legally authorized representative to participate in the research must be documented in writing and supported by signature of a witness not involved in the conduct of the research, except as provided in § 2.6 F of these regulations. Arrangements shall be made for those who need special assistance in understanding the consequences of participating in the research.

B. Each human research review activity shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete and professional review of human research activities.

C. Nontherapeutic research using institutionalized participants shall be prohibited unless it is determined by the research review committee that such nontherapeutic research will not present greater than minimal risk.

D. The individuals conducting the research shall be required to notify all participants of research of the risks caused by the research which are discovered after the research has concluded.

E. Department of Corrections studies, program evaluations, and routine data analyses for management purposes are exempt from this policy.

F. The burden of proof for review by any committee shall be with the principal researcher.

PART II. HUMAN RESEARCH REVIEW COMMITTEES.

§ 2.1. Certification process.

A. Organizational units seeking to conduct or sponsor human research are required to submit statements to the department assuring that all human research activities will be reviewed and approved by a human research review committee. Organizational units shall report annually to the director giving assurance that a committee exists and is functioning. These reports should include a list of committee members, their qualifications for service on the committee, their organizational unit affiliation and a copy of the minutes of committee meetings.

B. Prior to the initiation of a human research project, organizational units shall also send to the director a one-page summary containing the following information:

1. Name, address, telephone numbers, and title and affiliation of principal researcher;
2. Name of person who will supervise the project, if different from the principal researcher;
3. Funding source, if any;
4. Date the proposal was submitted to the committee;
5. Title of project;
6. An objectives statement of the proposed project with anticipated results;
7. Methodology describing in a concise manner the research design, sampling strategy, and analytical techniques to be used and indicating the effects of the research methodology, if any, on existing programs and organizational unit operations;
8. The voluntary informed consent statement;
9. Time frame indicating proposed beginning and

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ending dates;

10. Department resources required, including personnel, supplies and materials; equipment, workspaces, access to participants and files, and any other resources that the researcher will require from the department or its subsidiaries; and

11. Project endorsement for student research. Letters or other documents must be attached to indicate endorsement of the project by the academic advisor or other appropriate persons.

C. Each person engaged in the conduct of human research or proposing to conduct human research shall associate himself with any organizational unit having a committee, and such human research shall be subject to review and approval by the committee in the manner set forth in this section.

D. The director may inspect the records of the committee.

E. The chairman of the committee shall report as soon as possible to the head of the organizational unit and to the director any violation of the research protocol which led the committee to either suspend or terminate the research.

§ 2.2. Composition of research review committees.

A. Each committee shall have at least five members, appointed by the organizational unit head, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the organizational unit. The committee shall be sufficiently qualified through the experience and diversity of its members, including consideration of race, gender and cultural background. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of organizational unit commitments and regulations, if applicable by law; standards of professional conduct and practice; and community attitudes. If a committee regularly reviews research that has an impact on an institutionalized or other vulnerable category of participants, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these participants and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of men or women, or entirely of members of one profession. At least one member shall be an individual whose primary concerns are in nonscientific areas (e.g., lawyers, ethicists, members of the clergy). At least three members shall be individuals who are not otherwise connected with the department.

C. Each committee shall include at least one member who is not otherwise affiliated with the organizational unit

and who is not part of the immediate family of a person who is affiliated with the organizational unit.

D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member has a conflict of interest (defined as having direct involvement in or department approval authority over the proposed human research or otherwise having a conflict of interest under applicable Virginia law). The committee has responsibility for determining whether a member has a conflicting interest.

E. A committee may, at its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

F. A quorum of the committee shall consist of a majority of its members including at least one member whose primary concerns are in nonscientific areas. If a quorum cannot be established (or cannot meet within the established time frames) from the existing committee, the organizational unit head may replace temporarily an active committee member with an alternate to the degree needed to establish a quorum.

G. One member of the committee shall be designated as secretary of the committee and shall take and prepare formal minutes of each meeting.

H. The committee and the organizational unit shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

§ 2.3. Elements of each committee's review process.

A. No human research shall be conducted or authorized by an organizational unit or agency unless such committee has reviewed and approved the proposed human research project giving consideration to:

1. The adequacy of the description of the potential benefits and risks involved and the adequacy of the methodology of the research;
2. The degree of the risk and, if the research is nontherapeutic, whether it presents greater than minimal risk;
3. Whether the rights and welfare of the participants are adequately protected;
4. Whether the risks to the participants are outweighed by the potential benefits to them;
5. Whether the voluntary informed consent is to be obtained by methods that are adequate and appropriate, and whether the written consent form is adequate and appropriate in both content and language for both the research and participants of the

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research;

6. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;

7. Whether criteria for selection of participants are equitable, especially in research regarding the future development of mental or physical illness;

8. Whether the research conforms with such other requirements as the board may establish; and

9. Whether appropriate studies in the nonhuman systems have been conducted prior to the involvement of human participants.

B. Each committee shall review and approve projects to ensure conformity with the approved proposal at least annually.

C. Research shall be approved by the committee which has jurisdiction over the participant. When cooperating organizational units conduct some or all of the research involving some or all of the participants, each cooperating organizational unit is responsible for safeguarding the rights and welfare of human participants and for complying with these regulations, except that in complying with these regulations organizational units may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. Such arrangements may be made by the committee chairperson with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider research proposals within 45 days after submission to the committee's chairman. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. A committee shall notify investigators and the organizational unit in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval.

E. The committee shall develop a written procedure to be followed by a participant who has a complaint about a research project in which he is participating or has participated.

F. Any participant who has a complaint about a research project in which he is participating or has participated shall be referred to the chairperson of the committee who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

§ 2.4. Kinds of research exempt from committee review.

Research activities in which the only involvement of human participants will be in one or more of the following categories are exempt from these regulations unless the research is covered by other sections of these regulations:

1. Research conducted in established or commonly accepted educational settings, involving commonly used educational practices, such as:

a. Research on regular and special education instructional strategies; or

b. Research on the effectiveness of, or the comparison among, instructional techniques, curriculum or classroom management methods.

2. Research involving solely the use and analysis of the results of standardized psychological, educational, diagnostic, aptitude, or achievement tests, if information taken from these sources is recorded in such a manner that participants cannot be reasonably identified directly or through identifiers linked to the participants.

3. Research involving survey or interview procedures, unless responses are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:

a. The participants' responses, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participants' financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior, such as sexual behavior, drug or alcohol use, illegal conduct or family planning.

4. Research involving solely the observation (including observation by participants) of public behavior, unless observations are recorded in such a manner that participants can be identified directly or through identifiers linked to the participants, and either:

a. The observations recorded about the individual, if they became known outside the research, could reasonably place the participant at risk of criminal or civil liability or be damaging to the participant's financial standing, employability, or reputation; or

b. The research deals with sensitive aspects of the participant's own behavior such as sexual behavior, drug or alcohol use, illegal conduct or family planning.

5. Research involving solely the collection or study of

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existing data, documents, records, or pathological or diagnostic specimens, if these sources are publicly available or if the information taken from these sources is recorded in such a manner that participants cannot be identified directly or through identifiers linked to the participants.

6. Research involving solely a combination of any of the activities described in this section.

§ 2.5. Expedited review procedures for certain kinds of research involving no more than minimal risk.

A. The committee may conduct an expedited review of a human research project which involves no more than minimal risk to the participants if (i) another institution's or agency's human research review committee has reviewed and approved the project or (ii) the review involves only minor changes in previously approved research and the changes occur during the approved project period. Under an expedited review procedure, the review may be carried out by the committee chairperson or one or more experienced reviewers designated by the chairperson from among members of the committee. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 2.3 of these regulations.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

C. Research activities involving no more than minimal risk and in which the involvement of human participants will only be in one or more of the following categories (carried out through standard methods) may be reviewed by the research review committee through the expedited review procedure.

1. The study of existing data in the form of records on department personnel or clients, automated or other records.
2. Research on individual or group behavior or characteristics of individuals, such as studies of perception, attitudes or interaction patterns, where the investigator does not manipulate participants' behavior and the research will not involve stress to participants.

§ 2.6. Informed consent.

A. No human research may be conducted in the absence of voluntary informed consent subscribed to in writing by the participant or by the participant's legally authorized representative except as provided for in subsection F of this section. If the participant is a minor otherwise capable of rendering voluntary informed consent, the

consent shall be subscribed to by both the minor and his legally authorized representative. An investigator shall seek such consent only under circumstances that (i) provide the prospective participant or the representative sufficient opportunity to consider whether or not to participate and (ii) minimize the possibility of coercion or undue influence. The information that is given to the participant or the representative shall be in understandable language.

B. No individual shall participate in research unless subsection A of this section is met for each individual. The consent by a legally authorized representative shall be subject to the provisions of subsection C of this section. No voluntary informed consent shall include any language through which the participant waives or appears to waive any of his legal rights, including any release of any individual, institution, agency or any agents thereof from liability for negligence. Notwithstanding consent by a legally authorized representative, no person shall be forced to participate in any research project. Each participant shall be given a copy of the signed consent form required by § 1.3 A of these regulations, except as provided for in subsection F of this section.

C. No legally authorized representative may consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the participant. No nontherapeutic research shall be performed without the consent of the participant.

D. The committee may approve a consent procedure which omits or alters some or all of the elements of informed consent set forth in § 1.1 of these regulations, or waives the requirement to obtain informed consent provided the committee finds and documents that:

1. The research involves no more than minimal risk to the participants;
2. The omission, alteration or waiver will not adversely affect the rights and welfare of the participants;
3. The research could not practicably be performed without the omission, alteration or waiver; and
4. Whenever appropriate, the participants will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by § 1.1 of these regulations. This form may be read to the participant or the participant's legally authorized representative, but in any event, the investigator shall give either the participant or the representative adequate opportunity to read it before it is signed; or

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2. A short form written consent document stating that the elements of informed consent required by § 1.1 of these regulations have been presented orally to the participant or the participant's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the participant or the representative. Only the short form itself is to be signed by the participant or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the participant or the representative in addition to a copy of the short form.

F. The committee may waive the requirement for the investigator to obtain a signed consent form for some or all participants if it finds that the only record linking the participant and the research would be the consent document and that the principal risk would be potentially harmful resulting from a breach of confidentiality. Each participant will be asked whether he wants documentation linking him to the research, and the participant's wishes will govern. In cases where the documentation requirement is waived, the committee may require the investigator to provide participants with a written statement explaining the research.

§ 2.7. Committee records.

A. Documentation of all committee activities shall be prepared and maintained and shall include the following:

1. Copies of all research proposals reviewed, evaluations that may accompany the proposals, approved sample consent documents, progress reports submitted by researchers, reports of injuries to participants, and correspondence related to the research;

2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions, including the number of members voting for, against, and abstaining; the basis for requiring changes in or for disapproving research; and a written summary of the discussion of controversial issues and their resolution;

3. Records of continuing review activities;

4. Copies of all correspondence between the committee and the investigators;

5. A list of committee members;

6. Written procedures for the committee; and

7. Statements of significant new findings provided to the participants.

B. The records required by this regulation shall be retained for at least three years, and records relating to research which is conducted shall be retained for at least three years after completion of the research. All records shall be accessible for inspection and copying by authorized employees or agents of the department at reasonable times and in a reasonable manner.

§ 2.8. Mandatory reporting.

Each research review committee shall submit to the Governor, the General Assembly, and the director or his designee at least annually a report on the human research projects reviewed and approved by the committee, including significant deviations from the proposals as approved.

PART III. ROLE OF THE DEPARTMENT, DIRECTOR, AND THE BOARD.

§ 3.1. Role of the department, director, and the board.

A. The director shall establish and maintain records of organizational unit assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The director shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of rights of human research participants. The board shall be kept informed.

C. The director shall arrange for the printing and dissemination of copies of these regulations.

PART IV. APPLICABILITY OF STATE AND FEDERAL POLICIES.

§ 4.1. Applicability of state policies.

No statement in these regulations shall be construed as limiting in any way the rights of participants in research under regulations promulgated by the board pursuant to §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

§ 4.2. Applicability of federal policies.

Human research which is subject to policies and regulations for the protection of human participants promulgated by any agency of the federal government shall be exempted from these regulations. Annual certification shall be made to the director and the board that exempted projects have complied with the policies and regulations of federal agencies.

VA.R. Doc. No. R94-627; Filed February 25, 1994, 3:55 p.m.

Proposed Regulations

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

Title of Regulation: VR 245-01-01. Public Participation Guidelines (REPEALING).

Title of Regulation: VR 245-01-01:1. Public Participation Guidelines.

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

Public Hearing Date: April 12, 1994 - 7 p.m.

Written comments may be submitted through May 20, 1994.

(See Calendar of Events section for additional information)

Basis: The basis of this promulgation lies in § 63.1-85.4, which lists a power of the department "To make, adopt and promulgate such regulations ... as may be necessary to carry out the purpose and intent of this chapter ... by the Director or the Department ...".

Purpose: The regulation provides 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 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).

Substance: The guidelines define the procedures for the development of lists of interested parties to be used by the staff to notify known interested parties of planned action; the publication and advertisement of Notices of Intended Regulatory Action; the development of ad hoc advisory committees to assist in the drafting of regulations; the publication and advertisement of proposed and final regulations, including the statement of basis, purpose, substance, issues and estimated impact; and exempt regulations.

Issues: The guidelines are written to provide a clearly outlined process for public initiation of the review of regulations. In addition, the procedures to be followed by the staff in assisting the department in drafting and proposing regulations for public comment are detailed for public awareness and review.

Estimated Impact: The Department for the Deaf and Hard of Hearing is charged with the responsibility of providing various programs that act as a "communication bridge" between those who are deaf or hard of hearing and hearing persons. Regulations promulgated by the department range in nature from those defining the requirements of successfully completing the Virginia Quality Assurance Screening (VQAS) for sign language interpreters to the requirements of being eligible for low- or no-cost assistive technology available through the Technology Assistance Program. The guidelines defining

the process for public participation in the development of these governing regulations are critical to allow the department to promulgate effective and fair regulations.

No additional costs should be incurred by either the public in participation or the department in the development of regulation as a result of these guidelines. The proposed guidelines are required by the Administrative Process Act, and failure to approve these revisions would prohibit the department from properly promulgating regulations.

Summary:

This regulation requires the director to maintain a list of persons who have requested to be notified of the formation and promulgation of regulations by the department. It also requires the department to receive petitions for rulemaking, to publish a Notice of Intended Regulatory Action prior to promulgating or amending regulations, and to hold a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment. Finally, this regulation allows the director to appoint an ad hoc advisory committee to assist in the review and development of regulations for the department.

VR 245-01-01:1. Public Participation Guidelines.

PART I. DEFINITIONS AND STATEMENT OF PURPOSE.

§ 1.1. Definitions.

The following words and terms, when used in this regulation, shall have the following meanings 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.

"Department" means the Department for the Deaf and Hard of Hearing.

"Director" means the Director of the Department for the Deaf and Hard of Hearing.

"Person" means an individual, a corporation, a partnership, an association, a governmental body, a municipal corporation, or any other legal entity.

§ 1.2. 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 Department for the Deaf and Hard of Hearing. 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).

PART II.

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MAILING LIST.

§ 2.1. Composition of the mailing list.

A. The director 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 director. The director may add to the list any persons or entity he believes will serve the purpose of enhancing participation in the regulatory process.

C. The director may maintain additional mailing lists for persons or entities who have requested to be informed of specific regulatory issues, proposals, or actions.

D. The director 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 department.
4. A notice soliciting comment on a final regulation when the regulatory process has been extended.

PART III. PUBLIC PARTICIPATION PROCEDURE.

§ 3.1. Petition for rulemaking.

A. As provided in § 9-6.14:7.1 of the Code of Virginia, any person may petition the director 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 director shall receive, consider and respond to a petition within 180 days.

D. Nothing herein shall prohibit the director from receiving information from the public and proceeding on his own motion for rulemaking.

§ 3.2. Notice of Intended Regulatory Action.

A. The Notice of Intended Regulatory Action shall state the purpose of the action and a brief statement of the need or problem the proposed action will address.

B. The Notice of Intended Regulatory Action shall indicate whether the department intends to hold a public hearing on the proposed regulation after it is published. If the department does not intend to hold a public hearing, it shall state the reason in the Notice of Intended Regulatory Action.

C. The Notice of Intended Regulatory Action shall state that a public hearing will be scheduled, if, during the 30-day comment period, the department receives requests for a hearing from a least 25 persons.

§ 3.3. Notice of Comment Period.

A. The Notice of Comment Period shall indicate that copies of the proposed regulation are available from the department and may be requested in writing from the contact person specified in the Notice of Comment Period.

B. The Notice of Comment Period 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.

The department 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 director determines that a hearing is not required.

§ 3.4. Biennial review of regulations.

A. At least once each biennium, the director 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

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Register and shall be sent to the mailing list identified in § 2.1.

PART IV. ADVISORY COMMITTEES.

§ 4.1. Appointment of committees.

A. The director may appoint an ad hoc advisory committee whose responsibility shall be to assist in the review and development of regulations for the department.

B. The director may appoint an ad hoc advisory committee to provide professional specialization or technical assistance when the director determines that such expertise is necessary to address a specific regulatory issue or need or when groups or individuals register an interest in working with the agency.

§ 4.2. Limitation of service.

A. An advisory committee which has been appointed by the director may be dissolved by the director when:

1. There is no response to the Notice of Intended Regulatory Action, or

2. The director 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.

If the director determines that the specific regulatory need continues to exist beyond that time, he shall set a specific term for the committee of not more than six additional months.

At the end of that extended term, the director shall evaluate the continued need and may continue the committee for additional six-month terms.

VA.R. Doc. Nos. R94-615 and 616; Filed February 16, 1994, 12:42 p.m.

* * * * *

Title of Regulation: VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.

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

Public Hearing Date: April 12, 1994 - 7 p.m.

Written comments may be submitted through May 20, 1994.

(See Calendar of Events section for additional information)

Basis: Section 63.1-85.4 of the Code of Virginia lists the

powers of the department including: "8. To operate a program of telecommunications assistance and services to persons with hearing or speech impairments ...", and "9. To make, adopt and promulgate such regulations, consistent with this chapter, as may be necessary to carry out the purpose and intent of this chapter and other laws of the Commonwealth administered by the Director or the Department."

Purpose: The regulation establishes the process that will be used and the documentation that will be required by the Department for the Deaf and Hard-of-Hearing when receiving applications for the Technology Assistance Program.

Substance: The regulation ensures the following: (i) more appropriate application of income-based criteria in determining applicant's contribution, (ii) department's authority to prioritize recipients during times of fiscal constraint allowing the persons with the most immediate and/or greatest need to receive equipment more expeditiously, (iii) update the economic needs guidelines to coincide with other agencies, and (iv) exchange of previously issued equipment for devices that are subsequently added to the program when the new device is more applicable for the applicant's disability.

Once receiving equipment through the program, the applicant must first wait at least five years to reapply and then must provide proof that devices previously acquired through TAP are not functioning properly prior to receiving replacement equipment.

Issues: The regulation will allow for the persons with the most immediate and/or greatest need to access equipment more expeditiously. The more equitable application of the sliding fee scale will enable the department to disseminate more equipment and to better serve those Virginians who are in greater need.

Estimated Impact: The estimated impact of this regulation is projected to affect the estimated 600,000 Virginians who are deaf or hard of hearing. No additional costs should be caused by these guidelines to either the public or the department in the promulgation of these regulations.

Summary:

This regulation is used to screen applicants for the Telecommunications Assistance Program (TAP) and to determine the applicant's contribution towards the purchase of telecommunications equipment, if any. The amendments allow the department to give priority to first-time applicants during times of fiscal constraint. Renewal applicants, individuals who have previously received equipment through the program, must wait five years to submit subsequent applications and must include proof that the original equipment is no longer working. Additionally, amendments may allow an applicant to request an exchange for new equipment which becomes available through TAP and

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is deemed a more compatible device for the applicant. Finally, amendments allow for those applicants, whose income exceeds 150% of the maximum amount established by the Economic Needs Guidelines, to be required to contribute 100% of the contractual cost of devices.

VR 245-02-01. Regulations Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.

PART I. DEFINITIONS.

§ 1.1. Definitions.

The words and terms used in these regulations ~~this regulation~~ have the following meanings unless the context indicates otherwise:

"Alerting device" means a device that alerts individuals with a hearing loss of sounds around them.

"Amplification device" means a device that amplifies either incoming sounds for individuals who have a hearing loss or outgoing sounds for individuals who have a speech disability.

"Applicant" means a person who applies for technological assistive devices.

"Application" means the TAP Application (VDDHH-TDD-1).

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

"Completion date" means the date all supporting documentation for the application is received by the department.

"Coordinator" means the Technology Assistance Program Coordinator of the Virginia Department for the Deaf and Hard-of-Hearing.

"Coupon" means a voucher which may be used by the applicant towards the purchase of approved technological assistive devices from a contracted vendor.

"Deaf" means a hearing loss that requires use of a text telephone to communicate effectively on the telephone.

"Deaf-blind" means a dual loss of hearing and vision that requires use of a braille text telephone to

communicate effectively on the telephone.

"Department" means the Virginia Department for the Deaf and Hard-of-Hearing.

"Family" means the applicant, his dependents and any person legally required to support the applicant, including spouses.

"Fiscal constraint" means when the potential cumulative cost of equipment requested through the program for a budgeted portion of a fiscal year equals or exceeds 75% of program funds designated by the department to be available for purchasing equipment during the same period or when 75% of program funds for a fiscal year have been disbursed or encumbered.

"Gross income" means the income, total cash receipts before taxes from all sources of the applicant, his dependents, and any person legally required to support the applicant, including spouses.

"Hard of hearing" means a hearing loss that requires use of either a text telephone or an amplification device to communicate effectively on the telephone.

"Hearing aid specialist" means a person who ~~accepts compensation for evaluating hearing for the purpose of fitting appropriate hearing aids has a license from the Department of Professional and Occupational Regulation to fit and sell hearing aids .~~

~~"Hearing-impaired/visually-impaired"~~
"Hearing-disabled/visually-disabled" means a dual loss of hearing and vision that requires use of large visual display text telephone or a braille text telephone to communicate effectively on the telephone.

"Minor" means a person less than 18 years of age whose parents ~~are parent or legal guardian is~~ legally responsible for his support.

"Physician" means a person who has a medical degree and a license to practice medicine in any one of the United States.

"Program" or *"TAP"* means Technology Assistance Program for distributing technological assistive devices to individuals who are deaf, hard of hearing, ~~hearing-impaired/visually-impaired~~ *hearing-disabled/visually-disabled*, deaf-blind or ~~speech-impaired speech-disabled~~ and who meet eligibility requirements through an application process.

"Public assistance" means and includes aid to dependent children; auxiliary grants to the aged, blind and disabled; medical assistance; food stamps; general relief; fuel assistance; and social services.

"Recipient" means a person who receives technological assistive devices.

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"Ring signal device" means a device that alerts an individual who is deaf, hard of hearing, ~~hearing-impaired/visually-impaired~~ *hearing-disabled/visually-disabled* or deaf-blind of an incoming call.

"Speech-impaired" "*Speech-disabled*" means a loss of verbal communication ability which prohibits normal usage of a standard telephone handset.

"Speech" "*Speech-language pathologist*" means any person who ~~accepts compensation for examining, testing, evaluating, treating or counseling persons having or suspected of having disorders or conditions affecting speech, voice or language and is not authorized by another regulatory or health regulatory board to perform any such services is licensed by the Department of Health Professions to engage in the practice of speech-language pathology.~~

"Technological assistive device" means any adaptation for an alerting or communication system needed by individuals who are deaf, hard of hearing, ~~hearing-impaired/visually-impaired~~ *visually-impaired* ~~hearing-disabled/visually-disabled~~, deaf-blind or ~~speech-impaired speech-disabled~~.

"Text telephone" (hereinafter called ~~TFP~~ *TDD*) means a nonvoice terminal device used to transmit and receive messages via telephone. This includes, but is not limited to, telecommunications devices for the deaf (*TDD/TTY*) and computer modems.

"*VDDHH outreach specialist*" means a person hired by the department to provide outreach services and to assist the department in carrying out activities related to the Technology Assistance Program on either a regional or local level.

"Voice carryover (*VCO*) screen" means a device used to receive text telephone messages and transmit verbal messages, consecutively, via a telephone line either in conjunction with or independent of a standard telephone. This device is generally used in conjunction with a telecommunications relay service by a person who is deaf or hard of hearing and prefers to use his own voice rather than type the message manually.

PART II. DETERMINING OWNERSHIP.

§ 2.1. Ownership guidelines.

A. Any technological assistive device or component distributed through the program is the property of the individual recipient except for any device which, individually, has a value or cost in excess of \$5,000 at the date of acquisition.

B. The department shall retain ownership of any technological assistive device or component distributed through the program that costs \$5,000 or more.

Where ownership of technological assistive devices or components is retained by the department, ~~the department, in its discretion, may suspend part or all of the following regulations as deemed necessary information regarding financial data and family size shall not be required.~~

PART III. PARTICIPATION OF APPLICANT.

§ 3.1. Eligibility requirements.

Upon request for technological assistive devices by an applicant, the department will require information as to the family size, financial status, and other related data as described on the application. It is the applicant's responsibility to furnish the department with the correct financial data in order to be appropriately classified according to income level and to determine applicable charges for technological assistive devices. Applicants eligible to participate in the program shall meet the following requirements:

1. The applicant must be certified as deaf, hard of hearing, ~~hearing-impaired/visually-impaired~~ *hearing-disabled/visually-disabled*, deaf-blind, or ~~speech-impaired speech-disabled~~ by a licensed physician, audiologist, speech-language pathologist, hearing aid specialist, vocational rehabilitation counselor employed by the Department of Rehabilitative Services or the Department for the Visually Handicapped, a Virginia School for the Deaf and Blind representative, a VDDHH outreach specialist or other appropriate agency or government representative.
2. The applicant shall reside in the Commonwealth of Virginia.
3. An applicant shall submit a completed and signed application.

§ 3.2. Charges for equipment.

Eligible applicants shall be granted program participation based on a first-come, first-served basis and the availability of program funds.

A. Cost of the program to applicant.

If the individual or family monthly gross income is such that a charge for technological assistive devices is required, an explanation of the charges shall be provided to the recipient.

1. An applicant shall not be required to participate in the cost of technological assistive devices:
 - a. If his individual or family monthly gross income is:
 - (1) Obtained solely from public assistance, as

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defined in Part I of these regulations ~~this regulation~~, earnings of minor children or gifts, or any combination thereof; or

(2) Less than or equal to the Economic Needs Guidelines found in subdivision A 3 of this section.

b. If ownership of technological assistive devices or components is retained by the department.

2. Any other applicant shall be required to participate in the cost of any technological assistive devices distributed to the applicant. The portion paid by the applicant to the vendor shall be equal to the amount which his individual or family monthly gross income exceeds the following Economic Needs Guidelines. However, this amount shall not exceed the approved equipment total price or \$75, whichever is lower. determined as follows:

a. When the applicant's monthly gross income is 101%-150% of the economic needs guidelines found in § 3.2 3 of this regulation, the portion paid by the applicant shall be equal to 20% of the cost of the equipment package or \$75, whichever is lower.

b. When the applicant's monthly gross income is 151% of the economic needs guidelines found in § 3.2 3 of this regulation or greater, the portion paid by the applicant shall equal the full cost of the requested equipment package on state contract.

3. Statewide Economic Needs Guidelines. The same formula used to determine the following sets of Economic Needs Guidelines shall be applied where the number of family members exceeds six.

	Monthly Gross Income	Annual Gross Income
Family of 1	\$1,210	\$14,520
Family of 1	\$1,313	\$15,760
Family of 2	1,583	18,996
Family of 2	1,717	20,609
Family of 3	1,995	23,940
Family of 3	2,122	25,459
Family of 4	2,327	27,924
Family of 4	2,526	30,308
Family of 5	2,699	32,388
Family of 5	2,929	35,157
Family of 6	3,072	36,864
Family of 6	3,334	40,007

a. Northern Virginia Economic Needs Guidelines. To be used for applicants residing in Arlington, Fairfax, Loudoun, and Prince William counties and the incorporated cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

	Monthly Gross Income	Annual Gross Income
Family of 1	\$1,319	\$15,828
Family of 1	\$1,431	\$17,172
Family of 2	1,726	20,712
Family of 2	1,872	22,464
Family of 3	2,175	26,100
Family of 3	2,313	27,756
Family of 4	2,537	30,444
Family of 4	2,753	33,036
Family of 5	2,942	35,304
Family of 5	3,193	38,316
Family of 6	3,349	40,188
Family of 6	3,634	43,608

b. If an applicant is paying monthly installments toward a debt(s), then the amount of one monthly installment will be subtracted from the applicant's expected contribution before the valid amount owed is determined, under the following conditions:

(1) The debt(s) is owed for nonpreventative medical or dental services; and

(2) The debt(s) is owed by or for the applicant or individuals whom the applicant is legally responsible to support or is legally supported by.

§ 3.3. Type of equipment.

The equipment that may be available through the program includes but is not limited to: ~~TTTs~~ TDDs, large visual display ~~TTTs~~ TDDs, braille ~~TTTs~~ TDDs, amplification devices, ring signal devices, doorbell signalers, visual smoke/fire detectors, ~~TTT~~ TDD paper rolls, baby criers, and visual or vibrating alarm clocks.

PART IV. APPLICATION PROCEDURES.

§ 4.1. The application may be obtained from the department or the department's outreach specialists or other authorized distribution centers. Completed applications shall be forwarded to:

Virginia Department for the Deaf and Hard-of-Hearing

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ATTN: VDDHH-TAP
Washington Building
Capitol Square
1100 Bank Street
12th Floor
Richmond, VA 23219-3640.

The VDDHH telephone number is 1-800-552-7917 (V/~~TFP~~ TDD) or (804) 225-2570 (V/~~TFP~~ TDD).

§ 4.2. Processing applications.

A. The coordinator shall approve all applications for which eligibility requirements defined in § 3.1 are satisfied, except as provided in subsections B, C, ~~and D~~, E, F and G of this regulation. Priority may be given to first-time recipients during times of fiscal constraint, as determined by the director.

B. Original application shall not be approved:

1. When the applicant who must contribute has already been issued a coupon which is still valid towards the purchase of technological assistive devices under this program.

2. When the applicant has received a device from the TAP Program within the preceding ~~four~~ five years except for conditions set in subsections D and E of this section.

C. Application for replacement equipment shall not be approved when:

1. A device previously issued by the department has been subjected to abuse, misuse or unauthorized repair by the recipient.

2. The recipient fails to provide a police report of a stolen device or refuses to cooperate with the police investigation or in the prosecution of the suspect, including the refusal to testify in court when requested to do so.

3. The recipient is found negligent in the police report, such as doors to the house or car left unlocked or unattended.

4. The recipient has lost the device.

5. The recipient has sold the device.

D. Replacement equipment may be given within a ~~four-year~~ five-year period if a technological assistive device is damaged through natural disasters, such as lightning, electrical storms, or floods. The recipient must first send damaged equipment to the vendor. If the vendor certifies to the department that the equipment, provided it is still under valid warranty, is unrepairable due to natural disaster, a replacement unit shall be issued to the recipient, upon reapplication, either free or up to \$75 the

full cost of the requested equipment package, depending on eligibility criteria as outlined in § 3.2.

E. Exchange of equipment may be permitted ~~only~~ where the original equipment can no longer be used by a recipient due to deteriorating vision or hearing or when a new device has become available through TAP and is deemed more appropriate to the recipient's disability than a device previously issued to the recipient. A recipient must obtain a letter from a ~~physician~~ professional listed in § 3.1 of this regulation stating that the recipient has deteriorating vision or hearing and can no longer benefit from the equipment currently used by the recipient and that the recipient would benefit from another device available through TAP.

F. Eligibility requirements regarding financial data and family size shall not be required by the department if ownership of telecommunications devices or components is retained by the department.

F. A recipient of TAP equipment may submit a renewal application five years after receiving TAP equipment. It shall be the applicant's responsibility to furnish the department with proof that the device previously issued through TAP is not functioning properly before the renewal application will be approved.

§ 4.3. Notice of action on approved or denied applications.

The recipient shall be notified of a decision regarding an original or a renewal application within 30 days of the completion date.

§ 4.4. Fraud.

If a recipient obtained technological assistive devices under false premises or misrepresentation of facts on the TAP application, the department reserves the right to demand return of such equipment. Such a recipient may be prosecuted to the fullest extent of the law.

PART V. PROCESSING SYSTEM.

§ 5.1. Processing.

Processing, redemption and invoicing shall be governed by internal department procedures, contractual agreements and the Commonwealth of Virginia's Prompt Payment Act that shall be applied uniformly to applicants and contracted vendors.

§ 5.2. Liability.

Recipients shall be responsible for any repairs to or loss of a device issued in the program, except where the department retains ownership of the device subject to provisions in the loan agreement form.

PART VI.

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CONFIDENTIALITY.

§ 6.1. Confidentiality.

All TAP applications and other client materials shall be kept confidential by department personnel and other persons authorized by the department to view such materials. An applicant's award shall also be confidential and shall not be released without the applicant's permission.

VA.R. Doc. No. R94-672; Filed March 2, 1994, 11:50 a.m.



TECHNOLOGY ASSISTANCE PROGRAM

OVERVIEW

WHAT IS TAP?

The Technology Assistance Program (TAP), which is managed by the Virginia Department for the Deaf and Hard of Hearing, distributes telephone equipment and other assistive technology that helps Virginians become more independent.

WHO CAN USE TAP?

People who are certified as deaf, hard of hearing, deaf-blind, hearing-visually impaired or speech-impaired AND live in the Commonwealth of Virginia. There is no age restriction, but minors must have a parent or guardian co-sign a TAP application order form.

WHAT'S A TEXT TELEPHONE?

A Text Telephone (TT/TTY/TDD) is a small portable device, that has a typewriter-style keyboard with an acoustic coupler and/or direct jack connection, for telephone conversations with other people who also have a TDD. If the other person does not have a TDD, you can still use your TDD to call that person through the Virginia Relay Center at 1-800-828-1120. Voice users can use the relay by calling 1-800-828-1140.

IS A TDD EASY TO USE?

YES! Just place the telephone handset into the acoustic coupler on the TDD (or if your TDD has a direct jack connection, plug the telephone line into the back of the TDD). Then turn on the TDD and dial the person you want to talk to. There is a light on the TDD that will tell you if the telephone is "ringing" (slow flashing), "busy" (fast flashing) or "dead" (no flashing). You can begin the conversation as soon as the person answers.

WHAT'S AN AMPLIFIER?

An Amplifier is a volume control that helps some hard of hearing people to hear the speaker's message louder. There are also Speech Amplifiers which help listeners to understand speech-impaired people.

WHAT ABOUT SIGNALERS?

There are different kinds of Signalers that will let a person know that the telephone is ringing:

- Visual Signaler: causes a light (i.e. lamp) to flash
- Audible Signaler: has a very loud ring
- Tactile Signaler: vibrates so that a hearing-visually impaired or deaf-blind person can feel it
- Multi-Function Signaler: uses visual and tactile methods to alert the person of different sources of sound (i.e. telephone, alarm clock, doorbell)

DO I HAVE TO PAY FOR THESE DEVICES?

It depends on your whole family income, family size, where your family gets its income, and other factors. If you have to pay, it will not be more than a one-time cost of up to \$75.

WHAT ABOUT WARRANTY SERVICE?

All TAP equipment, except the speech amplification device and the Telebraille II, has a five-year warranty. If you have problems with a device, return it directly to the company that sent you the equipment with a note explaining the problem and telling the company that the device is from VDDHH-TAP. Repairs are free of charge, unless the device has been abused or misused. You pay the postage to ship the equipment to the company, but the company pays to have the repaired equipment shipped back to you.

WHAT DO I DO WHILE MY EQUIPMENT IS BEING REPAIRED?

People who have received equipment through VDDHH-TAP and are waiting for it to be repaired, can borrow the same or a similar device from VDDHH through the TAPLOAN program. There is no charge to borrow the equipment, and you may keep the devices for 30 days or until your own equipment is returned.

CAN I GET MORE THAN ONE KIND OF EQUIPMENT?

You can pick a Text Telephone or an Amplifier. You can also pick a Signaler with your Text Telephone or Amplifier.

IF I ALREADY HAVE TAP EQUIPMENT, CAN I APPLY AGAIN?

You can re-apply every four years for new equipment.

SO WHAT DO I DO NOW?

Just complete the TAP application order form, detach, fold, staple or tape and mail it to:

Virginia Department for the Deaf and Hard of Hearing
Technology Assistance Program
Washington Building, Capitol Square
1100 Bank Street, 12th Floor
Richmond, VA 23219-1640

For more information, call:
1-800-552-7917 (Voice/TDD)-VA only
1-804-225-2570 (V/T)

(VDDHH-TAP-1 Revised 07/93)



Application Order Form Instructions

All information listed on the application is confidential! All questions, except those in shaded areas, are to be answered by the person who is ordering and will be using the equipment. If the person is a minor (under 18 years of age), a parent or guardian should list the answers for the minor.

- SOCIAL SECURITY NUMBER:** Write in your Social Security number.
- NAME:** Print full legal name: last name, first name and middle initial.
- THIS APPLICATION IS:** Pick "NEW" if you have never applied for or received TAP equipment before. Pick "RENEWAL" if you received TAP equipment four years ago.
- BIRTHDATE:** Use numbers: May 1, 1940 = 05/01/40.
- MARITAL STATUS:** Check the appropriate box.
- SPOUSE NAME:** Print full legal name of the spouse of the person who is ordering the equipment. If none, leave blank.
- WHOLE FAMILY MONTHLY INCOME:** Put down the TOTAL dollar amount that you, your spouse, your children (and anyone else that you are legally required to support or that you claimed on your most recent income tax return) made in one month before taxes or other deductions (i.e. you make \$1300 a month from work, your spouse gets \$800 a month from a private pension plan and your child gets \$100 from a trust fund: \$1300 + \$800 + \$100 = \$2200 per month). **PUT DOWN ONLY THE TOTAL AMOUNT.** If you have non-preventative medical or dental expenses, please list on a separate piece of paper and submit it with this application.
- TOTAL FAMILY SIZE (INCLUDE YOURSELF):** List the number of people that you are legally required to support or that you claimed on your most recent income tax return. **BE SURE TO COUNT YOURSELF!** (i.e. you have a spouse and three children: 1 + 3 + yourself = 5). If you did not fill out a tax return, count the number of relatives living with you.
- WHERE DO YOU GET YOUR INCOME?** Select as many as appropriate from the codes below. Write in the code letter only (i.e. salary/wages = A).
 - A. Salary/Wages
 - B. Self-Employed (money after business deductions)
 - C. Unemployment Compensation
 - D. Worker's Compensation (if you were injured on the job)
 - E. Veteran's Benefits
 - F. Private Pension (Retirement)
 - G. Government Employees Pension
 - H. Alimony
 - I. Public Assistance
 - Includes Aid to Dependent Children (ADC or AFDC), Social Services (SSI) and SSDI or SSA) -- not regular Social Security retirement; Auxiliary Grants to the aged, blind or disabled; Medical Assistance (Medicaid); Food Stamps; General Relief; and Fuel Assistance
 - J. Earnings of minor children
 - K. Gifts
 - L. Regular Social Security (Retirement); Medicare
 - M. Other (Specify on application)

(i.e. for question #2, put down the minor's name, not the parent's or guardian's name). If any answer is incorrect, inconsistent or left blank, the application process will be delayed and you may have to fill out additional forms. **Please answer every question.**

- HOME ADDRESS:** Print your complete home address. A PO Box is not acceptable. Also enter the name of the city or county you live in.
- SHIPPING ADDRESS:** If different from home address, print your complete shipping/mailing address. It must be a Virginia address.
- TELEPHONE NUMBERS:** List your telephone numbers.
- DO YOU NEED TRAINING?** Check the appropriate box. This is FREE!
- DO YOU NEED HELP TO HOOK UP YOUR EQUIPMENT?** Check the appropriate box. This is FREE!
- APPLICANT CERTIFICATION/SIGNATURE:** Read all statements carefully before signing and dating the application. If the applicant is a minor, a parent or guardian must sign and include their Social Security number.
- PROFESSIONAL CERTIFICATION:** If new application (see # 3), take this application order form to any of the professionals listed in this section. They must fill out the section completely, certify your hearing loss, and return the application to you. VDDHH must approve a professional not listed in this section. If renewal application (see # 3) - skip to # 17.
- ORDER:** Pick only one Signaler from Group Two that you need.
- TELEPHONE STYLE:** Check the kind of telephone that you now have at home. Check all the kinds you have.
- ORDER:** Pick only one device from Group One that you need: a Text Telephone or an Amplifier.
- Group Three for future use. Do not write in this space.**

To mail applications:
 a. Tear application out.
 b. Fold so VDDHH address is shown.
 c. Staple or tape bottom of application.
 d. Put on return-class stamp.
 e. Mail to VDDHH-TAP.

Applicants for this program shall be afforded equal opportunity without regard to race, color, religion, national origin, physical handicap, or disability, sex or age.

IMPORTANT:
 Fill in and keep for your information in case you have any problems.
 Date Ordered: ___/___/___
 Signaler (write in kind you ordered) _____
 Text Telephone or Amplifier (write in kind you ordered) _____

Please allow 4 to 6 weeks to process the application. If you do not receive your VDDHH materials, please call 1-800-352-7017 (VAD).



Application Order Form

All Information is Confidential

APPLICATION ORDER #

- SOCIAL SECURITY NUMBER:** _____
- NAME:** _____
 LAST FIRST MI
- THIS APPLICATION IS:** ___ NEW ___ RENEWAL
- BIRTHDATE:** ___/___/___
- I AM:** ___ SINGLE ___ MARRIED
 ___ LEGALLY SEPARATED ___ DIVORCED
 ___ WIDOWED ___ A MINOR
- SPOUSE NAME:** _____
 LAST FIRST MI
- YOUR WHOLE FAMILY MONTHLY INCOME (BEFORE TAXES):** _____
- TOTAL FAMILY SIZE (INCLUDE YOURSELF):** _____
- WHERE DO YOU GET YOUR INCOME? (See instructions on p.2):** _____
- APPLICATION CERTIFICATION:**
 I Certify:
 1. All information on this application is true.
 2. I live in Virginia.
 3. I am deaf, hard of hearing, deaf-blind, hearing/visually impaired or speech-impaired.
 4. **YOUR WHOLE FAMILY MONTHLY INCOME (Question #7) is the total gross monthly income my family earns in one month.**

TEAR HERE

APPLICANT SIGNATURE: _____ Date: ___/___/___
 PARENT OR GUARDIAN: _____ Date: ___/___/___

- PROFESSIONAL CERTIFICATION:** Take this application to one of the professionals listed below. They must fill out this section and return the application to you.

<input type="checkbox"/> Doctor (licensed physician)	<input type="checkbox"/> Voc. School for the Deaf Rep.	ABOVE CONSUMER IS (PLEASE CHECK ONE)	
<input type="checkbox"/> Audiologist	<input type="checkbox"/> DRS or DHH Rep.		<input type="checkbox"/> Deaf
<input type="checkbox"/> Speech Pathologist	<input type="checkbox"/> Hearing Aid Specialist		<input type="checkbox"/> Hearing-Visually Impaired
<input type="checkbox"/> VDDHH Outreach Specialist	<input type="checkbox"/> Other appropriate agency Rep. (to check with VDDHH)		<input type="checkbox"/> Deaf-Blind
			<input type="checkbox"/> Speech-Impaired
			<input type="checkbox"/> Other _____

I certify that this applicant is "Deaf," "Hard of Hearing," "Hearing-Visually Impaired," "Deaf-Blind," or "Speech-Impaired".
 Name of Certifying Person: _____ Title: _____
 Name of Agency: _____ State Lic. # (if applicable): _____
 Address: _____ Use Home Number: () _____
 Date: _____
 Signature: _____

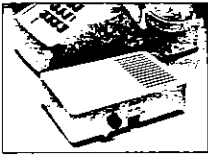
Application Form continues to the next page

- HOME ADDRESS (NO POST OFFICE BOXES):**
 STREET ADDRESS: _____
 CITY STATE ZIP CODE
- SHIPPING ADDRESS (MUST BE IN VIRGINIA ONLY):**
 NO POST OFFICE BOXES!
 ___ SAME AS HOME ADDRESS ___ OTHER:
 NAME: _____
 STREET ADDRESS: _____
 CITY STATE ZIP CODE
- TELEPHONE NUMBERS:**
 HOME: () _____ TDD ___ VOICE
 WORK: () _____ TDD ___ VOICE
- DO YOU NEED TRAINING (FREE!) TO USE THE EQUIPMENT?** ___ YES ___ NO
- DO YOU NEED HELP (FREE!) TO HOOK UP YOUR EQUIPMENT?** ___ YES ___ NO

EQUIPMENT DESCRIPTION:

17. GROUP TWO

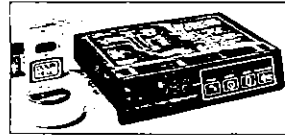
Check (✓) one box for the telephone Signaler that you want:
 TELEPHONE SIGNALERS: For all consumers, unless otherwise specified.



AMERIPHONE - SUPER PHONE RINGER
 Loud Ring For Telephone



AMERIPHONE - CALL ALERT
 Light Flasher For Telephone



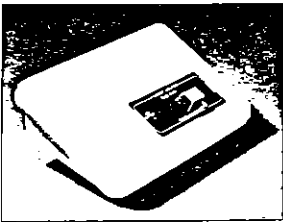
AMERIPHONE -ALERTMASTER 300
 Light Flasher AND Vibrator For Telephone / Alarm Clock / Doorbell

18. At home, I have this kind of telephone:
 Check (✓) all the kinds you have
 Trimline/Princess telephone
 Wall-mounted telephone
 Regular telephone

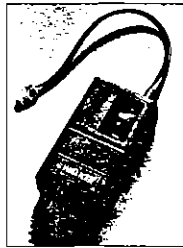
(Not Pictured)
 SONIC ALERT - TC1001/D21T
 Portable Vibrator For Telephone
 (For Deaf-Blind Consumers Only)

19. GROUP ONE

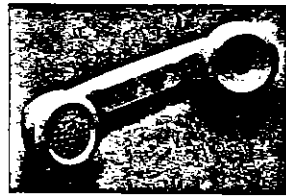
Check (✓) one box for the TDD or Amplifier that you want:
 TELEPHONE AMPLIFIERS: For consumers who are hard of hearing, unless otherwise specified.



AMERIPHONE HA-25
 Battery-powered in-line amplifier



WALKER W-10
 Electric-powered in-line amplifier



AT & T G-7
 Speech Amplifier
 (For Speech-Impaired Consumers Only)

Application Form continues to the next page

EQUIPMENT DESCRIPTION:

19. GROUP ONE (continued)

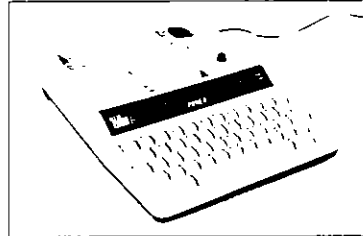
Check (✓) one box for the TDD or Amplifier that you want:
 TEXT TELEPHONES (TT/ TTY/ TDD): For consumers who are deaf, hard of hearing or speech-impaired, unless otherwise specified.



AMERIPHONE - DIALOGUE III
 TDD With ASCII (No Printer)



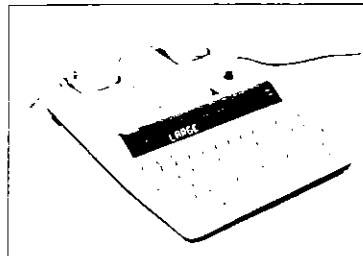
AMERIPHONE - DIALOGUE III
 Adjustable Type Printer & ASCII



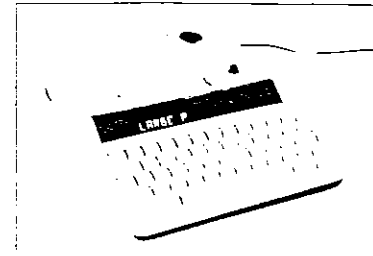
TELCOM - TELEVIEW 40T
 Adjustable Type Printer

ALL TDDs ON THIS PAGE HAVE:

- TDD auto answer
- Special 9-1-1 signal
- Built-in flasher



TELCOM - TELEVIEW 40V
 Large Visual Display & Adjustable Type Printer



TELCOM - TELEVIEW 80T
 Large Visual Display, Adjustable Type Printer & Wide Paper

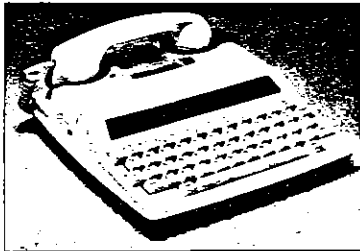
Application Form continues to the next page

EQUIPMENT DESCRIPTION:

19. GROUP ONE (continued)

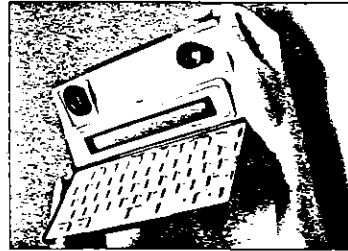
Check(✓) one box for the TDD or Amplifier that you want:

TEXT TELEPHONES (TT/TTY/TDD): For consumers who are deaf, hard of hearing or speech-impaired, unless otherwise specified.



AMERIPHONE - DIALOGUE I
Basic TDD (No Printer or ASCII)

20. GROUP THREE (For future use)



ULTRATEC - COMPACT
Portable TDD with ASCII
2-line, 40-Character Display

(Not Pictured)
TELEBRAILLE II
Braille TDD with ASCII
No Printer
(For Deaf-Blind Consumers Only)

End of Application

Fold Here

Place
First-Class
Stamp
Here

The Virginia Department for the Deaf and Hard of Hearing
Technology Assistance Program
1100 Bank Street, 12th Floor
Richmond, VA 23219-3640

Proposed Regulations

Proposed Regulations

DEPARTMENT OF EDUCATION (STATE BOARD OF)

NOTICE: The Department of Education is **WITHDRAWING** the proposed regulations entitled, VR 270-01-0055, Regulations for the Protection of Students as Participants in Human Research, as published in 9:75 V.A.R. 2267-2272 April 19, 1993. The department has resubmitted the proposed regulation with minor changes and the proposed regulation is published below.

* * * * *

Title of Regulation: VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research.

Statutory Authority: § 22.1-16.1 of the Code of Virginia.

Public Hearing Date: April 25, 1994 - 1:30 p.m.

Written comments may be submitted through May 20, 1994.

(See Calendar of Events section for additional information)

Basis: These regulations are proposed under the authority of § 22.1-16.1 of the Code of Virginia.

Purpose: The purpose of these regulations is to create a statewide uniform standard for the protection of students under the purview of the State Board of Education to ensure that the rights of such students are protected when they participate in research activities.

Substance: These regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the area of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a Review Board to oversee all research involving students that is conducted within the realm of its authority.

Issues: The major issue addressed by these regulations is the balance between the right of society to knowledge that may be gained through research involving human subjects and the rights of the individual to privacy and informed consent in regard to participation in the research.

Estimated Impact: The regulations will affect students involved in research to be conducted in any public schools including the Virginia Schools for the Deaf and the Blind or any proprietary schools certified by the board.

These regulations will have no fiscal impact. They will simply require that all schools and school divisions that come under the authority of the State Board of Education create a committee which oversees any research done involving students under their purview. All local divisions are equally affected by these regulations.

Summary:

The proposed regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the areas of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a review committee to oversee all research involving students that is conducted within the realm of its authority.

VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research.

§ 1. Applicability.

These regulations shall apply to the Virginia Department of Education or any public schools including the Virginia Schools for the Deaf and Blind or any proprietary schools certified by the Board of Education.

§ 2. Policy.

A. No human research may be conducted without informing the parent of the student in writing of the risks, procedures, and discomforts of the research. The consent of the parent of the student to participate in the research must be documented in writing and supported by the signature of a witness not involved in the conduct of the research, except as provided for in § 9 F of these regulations. Special arrangements shall be made for those who need special assistance in understanding the consequences of being a participant in human research.

B. Each human research activity shall be approved by a committee composed of representatives of varied backgrounds who shall assure the competent, complete, and professional review of human research activities.

C. The individual conducting the research shall be required to notify all parents of students who were participants in the research of the risks caused by the research which are discovered after the research has concluded.

§ 3. Definitions.

"Agency" means State Department of Education (state educational agency), local school divisions, Virginia Schools for the Deaf and Blind, or any proprietary school certified by the Board of Education.

"Assent" means a student's and a parent's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

"Board" means the State Board of Education.

"Department" means the State Department of Education.

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"Human research" means any systematic investigation which utilizes human subjects who may be exposed to physical or psychological injury as a consequence of participation and which departs from the application of established and accepted therapeutic methods appropriate to meet the subject's needs.

"Human subject" means a living individual about whom an investigator (whether professional or student) conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Intervention includes both physical procedures by which data are gathered (for example, surveys, questionnaires) and manipulation of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual, and which the individual can reasonably expect will not be made public, for example, a medical record. Private information must be personally identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or others associated with the investigation) in order for obtaining the information to constitute research involving human subjects.

For the purposes of these regulations, "human subject" refers to students.

"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 research, the basic elements of information necessary to such consent shall include the following:

- 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 reasonable 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.

"Local education agency" or "LEA" means the local school division responsible for providing educational services to students.

"Minimal risk" means 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 student.

"Parent" means a parent, a guardian, or a person acting as a parent of a child. The term "parent" means either parent, unless the LEA or the department has been provided with evidence that there is a legally binding instrument or a state law or court order governing such matters as divorce, separation, or custody which mother or father, the adoptive mother or father, or the legally appointed guardian or committee has custody of the child. The definition also includes persons acting in the place of a parent such as a grandparent or stepparent with whom the child lives, as well as the persons who are legally responsible for a child's welfare. The term also means a surrogate parent appointed pursuant to provisions set forth in Regulations Governing Special Education Programs for Children with Disabilities (VR 270-01-0007). A child 18 years or older, who has not been declared incompetent by a court, may assert any rights under these regulations in his own name.

"Permission" means the agreement of parent, guardian, or an individual acting as a parent of a student in the absence of a parent or guardian, to the participation of the student in research.

"Qualified review committee" means a group specifically formed to review research involving human subjects conducted or sponsored by an entity in order to protect the rights of the human subjects of such research.

"Student" means persons who have not attained the legal age for consent to treatments or procedures involved in the research under the applicable law of the jurisdiction in which the research will be conducted.

"Subject-at-risk" means any individual who may be exposed to the possibility of injury including physical, psychological, or social injury, as a consequence of participation as a subject in any research, development, or related activity which departs from the application of those established and accepted methods necessary as to meet his needs, or which increases the ordinary risks of daily life.

"Superintendent" means the Superintendent of Public

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Instruction for the Department. "LEA superintendent" means the local school division superintendent.

§ 4. Exemptions.

A. Research activities in which the only involvement of students will be in one or more of the following categories are exempt from these regulations:

1. 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 students cannot be identified directly or through identifiers linked to the students.

2. Research involving survey or interview procedures, unless responses are recorded in such a manner that the students can be identified directly or through identifiers linked to the students.

3. Research involving solely the observation of public behavior, including observation by participants, unless observations are recorded in such a manner that the students can be identified directly or through identifiers linked to the students.

4. Research involving 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 students cannot be identified directly or through identifiers linked to the students.

5. Research involving solely a combination of any of the activities described in this subsection.

B. Actions initiated by the board are exempt from these regulations.

§ 5. Certification process.

A. Agencies seeking to conduct or sponsor human research are required to submit statements to the department assuring that all human research activities will be reviewed and approved by a research review committee. The agency shall report annually to the Superintendent giving assurance that a committee exists and is functioning. These reports shall include a list of committee members, their qualifications for service on the committee, and their school affiliation. A copy of the minutes of committee meetings shall be kept on file with the reporting agency.

B. Prior to the initiation of a human research project, the agency shall also send to the agency head a

description of the research project to be undertaken, which shall include a statement of the criteria for inclusion of a student in the research project, a description of what will be done to the students, and a copy of the informed consent statement(s).

C. Each person engaged in the conduct of human research or proposing to conduct human research shall associate himself with an agency having a committee, and such human research as he conducts or proposes to conduct shall be subject to review and approval by the committee in the manner set forth in this section.

D. The Superintendent may inspect the records of the committee.

E. The chairperson of the committee shall report as soon as possible to the agency head and to the Superintendent any violation of the research protocol which led the committee to either suspend or terminate the research.

F. By definition, the agency seeking to conduct human research may be a local school division. In this instance, requirements set forth in these regulations are applicable to the LEA.

§ 6. Composition of research review committee.

A. Each committee must have at least five members, appointed by the agency head, with varying backgrounds to provide complete and adequate review of activities commonly conducted by the agency. The committee must be sufficiently qualified through the maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of students in human research. In addition to possessing the professional competence necessary to review specific activities, the committee must be able to ascertain the acceptability of applications and proposals in terms of agency regulations, applicable law, standards of professional conduct and practice, and community attitudes. If a committee reviews research that has an impact on an institutionalized or other vulnerable category of students, including residents of mental health, mental retardation, or correctional facilities, the committee shall have in its membership one or more individuals who are primarily concerned with the welfare of these students and who have appropriate experience to serve in that capacity.

B. No committee shall consist entirely of members of one profession, and at least one member must be an individual whose primary concerns are in noneducation areas.

C. Each committee shall include at least one member who is not otherwise affiliated with the agency and who is not part of the immediate family of a person who is affiliated with the agency.

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D. No member of a committee shall participate in the committee's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the committee. The committee has responsibility for determining whether a member has a conflicting interest. The committee's size shall be increased in the case of conflicting interests resulting in a decrease of the committee below five persons.

E. 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.

F. A committee may, in its discretion, invite individuals with competence in special areas to assist in the review of complex issues which require expertise beyond or in addition to that available on the committee. These individuals may not vote with the committee.

G. A quorum of the committee shall consist of a majority of its members.

H. The committee and the agency shall establish procedures and rules of operation necessary to fulfill the requirements of these regulations.

§ 7. Elements of the committee's review process.

A. No human research shall be conducted or authorized by an agency unless the human research review committee has reviewed and approved the proposed human research project giving consideration to the following factors:

1. The adequacy of the description of potential benefits and risks involved and adequacy of the methodology of the research;

2. The degree of risk, and, if the research is nontherapeutic, whether it presents greater than minimal risk;

3. Whether the rights and welfare of the students are adequately protected;

4. Whether the risks to the students are outweighed by the potential benefits to them;

5. Whether the informed consent is to be obtained by methods that are adequate and appropriate and whether the written consent form is adequate and appropriate in both content and language for the particular research and for the particular students of the research;

6. Whether the persons proposing to supervise or conduct the particular human research are appropriately competent and qualified;

7. Whether criteria for selection of students are equitable;

8. Whether the research conforms with such other requirements as the board may establish; and

9. Whether appropriate studies in nonhuman systems have been conducted prior to the involvement of students.

B. Each committee shall review approved projects to ensure conformity with the approved proposal at least annually.

C. Research must be approved by the committee which has jurisdiction over the student. When cooperating agencies conduct some or all of the research involving some or all of the students, each cooperating agency is responsible for safeguarding the rights and welfare of students and for complying with these regulations, except that in complying with these regulations agencies may enter into joint review, rely upon the review of another qualified committee, or make similar arrangements aimed at avoiding duplication of effort. Such arrangements may be made by the committee chairperson with the approval of a majority of the members present at a meeting of the committee.

D. The committee shall consider research proposals within 30 calendar days after submission to the committee chairperson. In order for the research to be approved, it shall receive the approval of a majority of those members present at a meeting in which a quorum exists. The committee shall notify investigators and the agency in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure committee approval. Such notification shall be issued within five calendar days of the committee's decision.

E. The committee shall develop a written description of the procedure to be followed by a student or parent who has a complaint about a research project in which the student is participating or has participated.

F. Any student, or the parent of any student, who has a complaint about a research project in which the student is participating or has participated shall be referred to the committee chairperson who shall refer it to the committee to determine if there has been a violation of the protocol.

G. The committee shall require periodic reports. The frequency of such reports should reflect the nature and degree of risk of each research project.

§ 8. Abbreviated review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

A. The committee may review some or all of the research listed in subsection C of this section through an

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expedited review procedure, if the research involves no more than minimal risk as determined by the committee chairperson. The committee may also use the expedited review procedure to review minor changes in previously approved research during the period (of one year or less) for which approval is authorized. Under an expedited review procedure, the review may be carried out by the committee chairperson and one or more experienced reviewers designated by the chairperson from among members of the committee. In reviewing the research, the reviewers may exercise all of the authorities of the committee except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in § 7 of these regulations.

B. Each committee which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

C. Research activities involving no more than minimal risk and in which the only involvement of students will be in one or more of the following categories (carried out through standard methods) may be reviewed by the research review committee through the expedited review procedure.

- 1. Voice recordings made for research purposes such as investigations of speech defects.*
- 2. Moderate exercise of healthy volunteers.*
- 3. Research on individual or group behavior or characteristics of individuals, such as studies of perception, cognition, game theory, or test development, where the investigator does not manipulate students' behavior and the research will not involve stress to students.*

§ 9. Informed consent.

A. No human research may be conducted in this Commonwealth in the absence of informed consent subscribed to in writing by the student, otherwise capable of rendering informed consent, and parent. An investigator shall seek such consent only under circumstances that provide the prospective student and parent sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence.

B. No individual shall participate in research unless this requirement is met for each individual. The giving of consent by a parent shall be subject to the provisions of subsection C of this section. No informed consent shall include any language through which the student or parent waives or appears to waive any of his legal rights, including any release of any individual or agency or any agents thereof from liability for negligence. Notwithstanding consent by a parent, no person shall be

forced to participate in any human research. Each parent shall be given a copy of the signed consent form required by § 2 A of these regulations, except as provided for in subsection F of this section.

C. No parent may consent to nontherapeutic research unless it is determined by the committee that such nontherapeutic research will present no more than a minor increase over minimal risk to the student.

D. The committee may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent, or waive the requirements to obtain informed consent provided the committee finds and documents that:

- 1. The research involves no more than minimal risk to the students;*
- 2. The waiver or alteration will not adversely affect the rights and welfare of the students; and*
- 3. The research could not practicably be carried out if informing the student would compromise the validity of the study.*

Whenever appropriate, the students and parents will be provided with additional pertinent information after participation.

E. Except as provided in subsection F of this section, the consent form may be either of the following:

1. A written consent document that embodies the elements of informed consent required by § 3 H of these regulations. This form may be read to the student and parent, but in any event, the investigator shall give the student and parent adequate opportunity to read it before it is signed; or

2. A short form written consent document stating that the elements of informed consent required by § 3 H of these regulations have been presented orally to the student and parent. When this method is used, there shall be a witness to the oral presentation. Also, the committee shall approve a written summary of what is to be said to the student or parent. Only the short form itself is to be signed by the student or parent. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the student or parent in addition to a copy of the short form.

F. The committee may waive the requirement for the investigator to obtain a signed consent form for some or all students and parents if it finds that the only record linking the student and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each parent will be asked whether the parent wants documentation

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linking the student with the research, and the parent's wishes will govern. In cases where the documentation requirement is waived, the committee, whenever appropriate, shall require the investigator to provide parents with a written statement regarding the research.

G. Information regarding the human research and consent shall provide an instruction that the parent or student or both may withdraw his consent and discontinue participation in the human research at any time without prejudice to him.

H. Information relative to the consent and research that is given to the student and parent shall be in language understandable to the student and parent. This includes all instances wherein the primary or home language is anything other than English.

§ 10. Committee records.

A. An agency, or when appropriate a committee, shall prepare and maintain adequate documentation of committee activities, including the following:

1. Copies of all research proposals reviewed; scientific evaluations, if any, that accompany the proposals; approved sample consent documents; progress reports submitted by investigators; and reports of injuries to students.

2. Minutes of committee meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the committee; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or for disapproving research; and a written summary of the discussion of controverted issues and their resolution.

3. Records of continuing review activities.

4. Copies of all correspondence between the committee and the investigators.

5. A list of committee members.

6. Written procedures for the committee.

7. Statements of significant new findings provided to parents of students.

B. The records required by this regulation shall be retained for at least five years, and records relating to research which is conducted shall be retained for at least five years after completion of the research. All records shall be accessible for inspection and copying by the state Superintendent of Public Instruction or designated members of his staff at reasonable times and in a reasonable manner.

§ 11. Role of the department, Superintendent, and the

board.

A. The Superintendent or his designee shall establish and maintain records of agency assurances, annual reports, and summary descriptions of research projects to be reviewed by the board.

B. The Superintendent or his designee shall review communications from committees reporting violations of research protocols which led to suspension or termination of the research to ensure that appropriate steps have been taken for the protection of the rights of students involved in human research. The board shall be kept informed.

C. The Superintendent or his designee shall arrange for the printing and dissemination of copies of these regulations.

D. Each committee shall submit to the Superintendent or his designee annually a report on the human research projects reviewed and approved by the committee and to report any significant deviations from the proposals as approved.

E. The Superintendent shall submit to the Governor and the General Assembly annually a report on the human research projects reviewed and approved by the committees and any significant deviations from the proposals as approved.

§ 12. Applicability of state policies.

Nothing in these regulations shall be construed as limiting in any way the rights of students in research under regulations promulgated by the board pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 and § 22.1-16.1 of the Code of Virginia.

§ 13. Applicability of federal policies.

Human research which is subject to policies and regulations for the protection of students promulgated by any agency of the federal government shall be exempt from these regulations. Agencies shall notify the Superintendent annually of their compliance with the policies and regulations of federal agencies.

VA.R. Doc. No. R94-673; Filed March 2, 1994 11:15 a.m.

* * * * *

Title of Regulation: VR 270-01-0060. Minimum Standards for the Accreditation of Child Day Programs Serving Children of Preschool Age or Younger in Public Schools.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Public Hearing Dates: April 5, 1994 - 7 p.m.

Written comments may be submitted until June 7, 1994.

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(See Calendar of Events section for additional information)

Basis: Section 22.1-19 of the Code of Virginia requires the Board of Education to promulgate accreditation standards for education and care programs provided by public schools that are not exempt from § 63.1-196.001 A 6 of the Code of Virginia.

Purpose: The purpose of these regulations is to set minimum standards for the approval of child day programs for preschool-age children operated by public schools as required by § 22.1-19 of the Code of Virginia as amended by the 1993 General Assembly. The provision requires the Child Day-Care Council to prescribe standards for those centers; however, the law requires the Board of Education to accredit programs operated by local school divisions as a part of its regular school accreditation process provided those programs meet or exceed the requirements prescribed by the Child Day-Care Council.

Substance: These regulations, along with applicable sections of the existing Regulations Governing the Accreditation of Public Schools in Virginia adopted by the board, serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve preschool-age children not subject to compulsory attendance laws. They are identical in content to those regulations adopted by the Child Day-Care Council which became effective November 1, 1993, with the following exceptions where they substantially exceed those requirements:

1. Educational qualifications for staff have been increased.
2. Staff Development: Language has been added to require that staff development activities include planned objectives and an assessment component; and the minimum requirement for annual staff development activities has increased from eight, as required by the Child Day-Care Council, to 16; and
3. The minimum requirement for indoor activity space has been increased to 35 square feet. Regulations adopted by the Child Day-Care Council require 25 square feet.
4. Child-staff ratios have been reduced for children aged two to five years old.

Issues: The proposed regulations do not mandate these programs; therefore, they affect only those local school divisions desiring to operate programs for preschool-age children. In 1992-93 Head Start programs were operated in 14 school divisions, Chapter I Prekindergarten Programs were operated in 44 divisions, and locally funded preschool programs were operated in 10 divisions. In addition, the department funded through Child Development Block Grants model programs (both full day and extended day) for at-risk four-year-olds at 17 school

and community sites around the state. Many of these programs are currently licensed by the Virginia Department of Social Services and will be grandfathered under the proposed regulations.

Impact : Implementation of the proposed regulations would require no additional costs to local school divisions currently operating programs. Based on a survey of nine local school divisions recently issued a child care license by the Department of Social Services, it was concluded that implementation of the proposed regulations would require a one-time cost between \$0.00 and \$250 per classroom to bring the classroom or program into compliance. It is estimated that an additional four staff persons at salary grade 12 (Assistant Specialists) will be required to carry out the monitoring of these programs and those for school-age children. The minimum cost to meet this requirement is estimated to be \$175,000. These individuals would also monitor programs for school-aged children.

All regulated entities will be equally impacted by these proposed regulations if they elect to operate the program.

Summary:

Provisions of the Code of Virginia regarding the licensure of child day programs by the Department of Social Services have been amended to require Board of Education accreditation of day care programs run by the public schools for preschool-age children (e.g., custodial child care or combination custodial/educational programs for children aged two to five years old, and educational programs for four-year-olds). Specifically, the legislation requires the Board of Education to incorporate into the Regulations Establishing Standards for Accrediting Public Schools in Virginia, regulations which meet or exceed those for licensing day care centers issued by the Child Day-Care Council. The council's regulations have been adopted and became effective November 1, 1993. These regulations, upon adoption, will be incorporated into the existing accrediting standards.

The proposed regulations, although somewhat different in a format and terminology from those of the Child Day-Care Council, meet, and in a few instances exceed, those regulations. They are extremely detailed and specific. They govern all aspects of the operation of child day programs including, but not limited to, administration, policy and procedures, recordkeeping, personnel, physical facilities, programs, equipment, playgrounds, provisions for emergency treatment of children in the event of a medical condition or injury, transportation, and nutrition. In addition, the regulations contain separate requirements for Montessori programs offered by local school divisions.

The regulations substantially exceed the council's requirements in these areas:

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1. Amendments raise minimum educational requirements for staff including the elimination of lesser requirements of an associate degree or lower for some staff and requiring a high school diploma or G.E.D. for aides as found in the council's regulations.

2. Language has been added to require that staff development activities include planned objectives and an assessment component.

3. The minimum requirement for annual staff development activities has increased from eight, as required by the Child Day-Care Council, to 16.

4. The minimum requirement for indoor activity space has been increased to 35 square feet. Regulations adopted by the Child Day-Care Council require 25 square feet.

5. Child-staff ratios for programs serving two to five year olds have been lowered.

6. CPR is required in addition to first aid training.

There are instances where minor upgrading has occurred or language revised to meet the department's needs. Matters relating to periodic monitoring, issuing of accreditation certificates have been decided via department policy rather than being stated in the regulations since the entire body of accrediting standards and the monitoring process are currently under review.

Further, the regulations authorize the Superintendent of Public Instruction to make exceptions to the requirements for cause. The Superintendent also has been authorized to make recommendations to center operator following an investigation of any complaint received. The LEA will be required to follow the recommendation(s). Finally, the proposed regulations include appendices which provide useful information to center operators regarding activities, medical situations, playground construction and equipment, and nutrition.

Preamble:

The Code of Virginia designates the Department of Social Services as the agency responsible for the regulation of residential and day programs for children including child day centers. Further, the Code requires the Child Day-Care Council to prescribe standards for those centers; however, the law requires the Board of Education to accredit programs operated by local school divisions as a part of its regular school accreditation process provided those programs meet or exceed the requirements prescribed by the Child Day-Care Council.

These regulations, along with applicable sections of the existing Regulations Governing the Accreditation

of Public Schools in Virginia adopted by the board, serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve children not subject to compulsory attendance laws. Exceptions may be made by the Superintendent of Public Instruction for cause.

VR 270-01-0060. Minimum Standards for the Accreditation of Child Day Programs Serving Children of Preschool Age or Younger in Public Schools.

PART I. DEFINITIONS, EXEMPTIONS, PURPOSE, APPLICABILITY.

§ 1.1. Definitions.

Position titles used in these standards are descriptive only and do not preclude the use of other titles in school programs.

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

"Admission" means a written or oral agreement for a child's provisional inclusion in the program.

"Adult" means any individual 18 years of age or older.

"Age groups"

"Infant" means children from birth to 16 months.

"Toddler" means children from 16 months up to two years.

"Preschool" means children from two years up to the age of eligibility to attend public school, five years by September 30.

"School age" means children from the age of eligibility to attend public school and older, age five or older by September 30.

"Board" means the Virginia Board of Education.

"Center" means a child day center program offered by a local school board or division.

"Character and reputation" means findings have established, and knowledgeable and objective people agree, that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

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"Child" means any individual under 18 years of age.

"Child day 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.

Exemptions: (§ 63.1-196.001 of the Code of Virginia)

1. A child day center that has obtained an exemption pursuant to § 63.1-196.3 of the Code of Virginia;

2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to approval;

3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period;

4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed 1 1/2 hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;

5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week;

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, including, but not limited to, early childhood special education programs and vocational child care programs and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language;

7. Education and care programs provided by public

schools which are not exempt pursuant to subdivision 6 of this definition shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the commissioner;

8. Early intervention programs for children eligible under Part H of the Individuals with Disabilities Education Act wherein no child attends for more than a total of six hours per week;

9. Practice or competition in organized sports leagues;

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services;

11. Child-minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving services or participating in activities offered by the establishment;

12. A certified preschool or nursery school program operated by a private school which is accredited by a statewide accreditation organization recognized by the State Board of Education which complies with the provisions of § 63.1-196.3:1 of the Code of Virginia. The provisions of this subdivision shall expire on July 1, 1994;

13. Prescribed therapeutic recreation programs provided for children with disabilities in programs that meet the child day center definition shall not be subject to approval under this chapter until the appropriate regulations are promulgated; or

14. By policy, a child day center that is required to be programmatically licensed by another state agency for that service.

"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.

"Contract employee" means an individual who enters into an agreement to provide specialized services for a specified period of time.

"Department" means the Virginia Department of Education.

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"Department's representative" means an employee or designee of the Virginia Department of Education, acting as the authorized agent of the commissioner.

"Developmentally appropriate" means a philosophy which applies a knowledge of child development to the curriculum, the environment, adult-child interactions, and staff-parent interactions, and which recognizes the age span of the children within the group, as well as the needs of the individual child.

"Enrollment" means the actual attendance of a child as a member of the center.

"Evening care" means care provided in a center between the hours of 7 p.m. and 1 a.m., inclusively.

"Fall zone" means the area underneath and surrounding equipment that requires a resilient surface. It shall encompass sufficient area to include the child's trajectory in the event of a fall while the equipment is in use.

"Montessori module" means a group of alternative, specific standards in the regulations allowed for all programs meeting the eligibility criteria of a Montessori preschool program, as specified in the module.

"Montessori preschool programs" are educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori, thus verifying that the preschool meets the Montessori standards as outlined in the Montessori module. Only Montessori schools which meet the Montessori criteria as outlined in the Montessori module are eligible to comply with the modified licensing standards contained in that module.

"Overnight care" means care provided in a center between the hours of 1 a.m. and 5 a.m., inclusively.

"Parent" means the biological or adoptive parent or parents or legal guardian or guardians of a child enrolled in or in the process of being admitted to a center.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Programmatic experience in the group care of children" means time spent working directly with children in a group, in a child care situation which is located away from the child's home (e.g., Sunday school, vacation Bible school, scouts, etc.).

"Sponsor" means an individual, partnership, association, public agency, corporation or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a center subject to approval.

"Staff" means administrative, activity, service, and volunteer personnel who work in the facility.

"Staff positions" are defined as follows:

"Aide" means the individual designated to be responsible for helping the program leader/child care supervisor in supervising children and in implementing the activities and services for children.

"Program leader" or "child care supervisor" means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children.

"Program director" means the primary, on-site director/coordinator designated to be responsible for developing and implementing the activities and services offered to children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not the program director personally performs these functions.

"Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director.

"Superintendent" means the Superintendent of Public Instruction.

"Volunteers" means persons who come to the center less than once a week and are not counted toward the required number of staff.

"Volunteer personnel" means persons who work at the center once a week or more often or who are counted in the required ratio of staff-to-children. Parent volunteers, such as parents helping in the classroom of a parent cooperative preschool, are considered volunteer personnel if they are counted in the staff-to-children ratio or if they volunteer once a week or more often.

§ 1.2. Responsibility of the Department of Education.

Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia describes the responsibility of the Department of Education for the regulation of residential and day programs for children, including child day centers.

§ 1.3. Responsibility of the Child Day-Care Council.

Section 63.1-202 of the Code of Virginia requires the Child Day-Care Council to prescribe standards for certain activities, services, and facilities for child day centers.

§ 1.4. Purpose of the standards.

The purpose of these minimum standards is to protect

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children of preschool age or younger who are separated from their parents during a part of the day by:

1. Ensuring that the activities, services, and facilities of centers are conducive to the well-being of children, and
2. Reducing risks in the environment.

§ 1.5. Montessori program standards.

The minimum standards in Parts I through VIII and the Montessori module in Part IX of these regulations for Montessori preschool programs wanting to meet alternative standards, apply to child day centers serving children of preschool age or younger as defined in § 1.1 of these standards.

§ 1.6. Violations.

The department shall investigate any alleged violation of the provisions of these regulations in accordance with procedures approved by the Superintendent. Centers shall be bound by any recommendations made as a result of the investigation.

PART II.

ADMINISTRATION, POLICIES AND PROCEDURES, RECORDS.

§ 2.1. Sponsors.

Each center shall have a clearly identified sponsor which shall be identified by its legal name in accordance with state requirements. Programs offered under theegis of the board shall be sponsored by the local school board.

§ 2.2. Control.

The names and addresses of individuals who hold primary financial control and officers of the sponsor or governing body shall be disclosed fully to the Department of Education. The local school board shall assume primary financial responsibility for programs operated under these regulations.

§ 2.3. Character of sponsors.

The sponsor, represented by the individual proprietor, partners, officers, and managers delegated authority to act for a sponsor shall be of good character and reputation and shall not have been convicted of a felony or a misdemeanor related to abuse, neglect, or exploitation of children or adults.

§ 2.4. Inspection of facilities.

The sponsor shall afford the Superintendent or his agents the right at all reasonable times to inspect facilities, all of his financial books and records, and to interview his agents, employees, and any child or other

person within his custody or control.

§ 2.5. Posting of certificate.

The certificate of accreditation shall be posted in a place conspicuous to the public, near the main entrance of the building or the main office.

§ 2.6. Responsibilities of the school division.

The operational responsibilities of the school division shall include, but not be limited to, the following:

1. Developing a written statement of the purpose, scope, and philosophy of the services to be provided by the center and written policies under which the center will operate;

2. Ensuring that the center's activities, services, and facilities are maintained in compliance with: these minimum standards; the terms of the current certificate issued by the department; other relevant federal, state, and local laws and regulations including the Americans with Disabilities Act and state law regarding disabilities; and the center's own policies and procedures; and

3. Identifying in writing the individuals responsible for the day-to-day operations and implementation of both these regulations and the facility's policies.

§ 2.7. Advertising prohibitions.

No center "shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made...an advertisement of any sort regarding services or anything so offered to the public, which ... contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading" (§ 63.1-196 of the Code of Virginia).

§ 2.8. Liability insurance required.

The center shall maintain public liability insurance for bodily injury with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate or have equivalent self-insurance which is in compliance with local codes. Evidence of insurance coverage shall be made available to the department's representative upon request unless the center is self-insured.

§ 2.9. Accident or insurance plan required.

A plan of accident or school insurance shall be available to the parent. The center may designate whether the parent's participation in the plan is optional or mandatory.

§ 2.10. Annual plan for injury prevention required.

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The center shall develop an annual plan for injury prevention. This plan shall be based on documentation of injuries and a review of the activities and services.

§ 2.11. Playground safety plan required.

The center shall develop a playground safety plan which shall include:

1. Provision for active supervision by staff;
2. Positioning of staff on the playground to help meet the safety needs of children; and
3. Method of maintaining resilient surface.

§ 2.12. Hospital operated programs.

Hospital operated centers may temporarily exceed their licensed capacity during a natural disaster or other catastrophe if:

1. The center has developed a plan with defined limits for its emergency operation, and
2. The center has received prior approval of the plan by the department. The department may monitor the center during this time and impose additional requirements for the safety of children or withdraw the approval to exceed the capacity.

§ 2.13. Counting numbers of children.

If children 13 years or older receive supervision in the program, they shall be counted in the number of children receiving care.

§ 2.14. Parental notification required.

Before a child's enrollment, parents shall be provided in writing the following:

1. Operating information:
 - a. The center's purpose, scope, philosophy, and any religious affiliations;
 - b. The hours and days of operation and holidays or other times closed;
 - c. The procedures for admission and registration of children;
 - d. Fees and tuition, including whether participation in the accident or school insurance is mandatory;
 - e. The phone number of the center;
 - f. The program and services provided and the ages of children accepted;

g. Organizational chart or other description of established lines of authority for persons responsible for center management within the organization; and

h. Reasons and procedures for removal of children from rolls including the amount of notice required for the parent and center before removal from the program.

2. Arrival and departure for children:

a. Policy governing a parent picking up a child after closing hours and procedures if the child is not picked up;

b. Policy for release of children from the center only to responsible persons for whom the center has written authorization;

c. Procedures for protecting children from traffic and other hazards during arrival and departure and when crossing streets; and

d. A policy describing the acceptable level of supervision of children upon arrival to and departure from the center.

3. Program and activities:

a. Procedures and policies about accepting and storing children's personal belongings;

b. Discipline policies including acceptable and unacceptable discipline measures;

c. Food policies;

d. Transportation safety policies and procedures when provided; and

e. Policies and procedures encouraging parental involvement.

4. Health and emergencies:

a. Procedures for storing and giving children's medications;

b. Policy for reporting suspected child abuse; and

c. Policy for providing emergency medical care.

§ 2.15. Staff information required.

Before staff are allowed to supervise children, staff shall be provided with the information listed in § 2.14 and the following:

1. Procedures for caring for a child who may arrive after any scheduled start time of the center;

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2. Procedures to confirm absence of a child from the center when the child attends more than one care or educational arrangement a day;

3. Procedures for identifying where attending children are at all times including field trips; and

4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies, and natural disasters, including but not limited to fire, flood, or other severe weather.

§ 2.16. General record keeping.

A. All children's records and personnel records shall be treated confidentially and shall be made available to the custodial parent upon request.

B. Records, logs, and reports shall be kept. Records may be kept at a central location except as indicated otherwise in these standards.

C. All records, logs, and reports on children and staff required by these standards shall be maintained and made accessible for two years after termination of enrollment or employment unless specified otherwise.

D. All records shall be kept in accordance with the provisions of regulations of the board entitled "Management of the Student's Scholastic Record in the Public Schools of Virginia (VR 270-01-0014)."

§ 2.17. Children's records.

Each center shall maintain and keep at the center a separate record for each child enrolled which shall contain the following information:

1. Name, nickname (if any), sex, and birth date of the child;

2. Name, home address, and home phone number of each parent who has custody;

3. When applicable, work phone number and place of employment of each parent who has custody;

4. Name and phone number of child's physician;

5. Name, address, and phone number of two designated people to call in an emergency if a parent cannot be reached;

6. Names of persons authorized to pick up the child. Appropriate legal paperwork shall be on file when the custodial parent requests the center not to release the child to the other parent;

7. Allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;

8. Chronic physical problems and pertinent developmental information will be kept in a category 2 file in accordance with the provisions of § 2.16 D;

9. Health information as required by §§ 2.26 through 2.27 of these regulations except that when a center is located in the same building where a child attends school and the child's record has a statement verifying the school's possession of the health record, the center is not required to maintain duplicates of the school's health record for that child provided the school's records are accessible during the center's hours of operation;

10. Written agreements between the parent and the center as required by §§ 2.21 and 2.22;

11. Name of any additional programs or schools that the child is concurrently attending and the grade or class level; and

12. Enrollment and termination date.

§ 2.18. Staff records.

Staff records shall be kept for paid staff and volunteer personnel which shall include the following:

1. Name, address, verification of age requirement, job title, and date of employment or volunteering;

2. Documentation that two or more references as to character and reputation as well as competency were checked before employment or volunteering. If a reference check is taken over the phone, documentation shall include dates of contact, names of persons contacted, the firms contacted, results, and signature of person making call;

3. Reference checks are not required for:

a. Staff hired before April 1, 1986, in centers initially approved prior to the implementation of these regulations;

b. Staff who began work in previously excepted centers that were initially required to be licensed prior to the implementation of these regulations; and

c. Parents who are volunteer personnel at a cooperative preschool if the parent was referred to the school by another parent or if the board of the preschool documents in writing each year that it agrees not to obtain reference checks on families not referred by other members;

4. A criminal record check as required by the Regulation for Criminal Record Checks for Child Welfare Agencies (VR 615-36-01) adopted by the Department of Social Services or any applicable

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regulation of the board;

5. Name, address, and telephone number of a person to be notified in an emergency, which shall be kept at the center;

6. Written information to demonstrate that the individual possesses the education, orientation training, staff development, certification, and experience required by the job position;

7. First aid and other certification as required by the responsibilities held by the staff member;

8. Health information as required by §§ 2.29 through 2.30 of these regulations;

9. Information, to be kept at the center, about any health problems which may interfere with fulfilling the job responsibilities;

10. Date of termination when applicable; and

11. Staff records on parents who are volunteer personnel at a cooperative preschool may be combined with the children's records if the parent agrees to this arrangement.

§ 2.19. Activities log to be kept.

The center shall keep a written log of the following:

1. Children in attendance each day;
2. Medication given to children as required by § 7.4;
3. Children's accidents or injuries as required in § 7.9;
4. Quarterly asbestos inspections as required in subdivision C 2 of § 4.2 or as required by other applicable state or federal statutes and regulations; and
5. Emergency evacuation practice drills as required in § 7.7 C.

§ 2.20. Reports to be maintained.

Reports shall be filed and maintained as follows:

1. The center shall inform the Superintendent within two working days of the circumstances surrounding the following incidences:
 - a. Death of a child, and
 - b. Missing child when local authorities have been contacted for help.
2. Any suspected incidence of child abuse shall be reported in accordance with § 63.1-248.3 of the Code

of Virginia.

§ 2.21. Agreement for medical treatment.

A written agreement between the parent and the center shall be in each child's record at the time of the child's enrollment. The agreement shall be signed by the parent and include:

1. An authorization for emergency medical care should an emergency occur when the parent cannot be located immediately, and
2. A statement that the center will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible.

§ 2.22. Transportation and field trips.

When applicable, written permission from the parent authorizing the child's participation in the center's transportation and field trips shall be in the child's record.

§ 2.23. Termination.

When a center decides to terminate the enrollment of a child, the center shall provide the parent the reasons for termination in writing. Prior to termination, reasonable efforts shall be made to work with the child and the family to resolve any problems that would serve as a basis for termination.

§ 2.24. Communication between staff, parent, and child.

Before the admission of a preschool or younger child, there shall be personal communication among a staff person, the parent, and the child unless there are unusual circumstances which do not allow the child to be present for the communication. Also, programs where children attend two or fewer weeks are not required to involve the child during this communication. The purpose of the communication shall be to provide the opportunity for the parent and staff to share information and agree about the admission of the child.

§ 2.25. Immunizations for children.

A. Regulations by the State Board of Health for the immunization of school children require documentation of all age appropriate immunizations prescribed in the regulations before each child's enrollment to a center licensed by this Commonwealth. Documentation of immunizations is not required for any child whose (i) parent submits an affidavit to the center, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or (ii) physician or a local health department states on a MCH 213B or MCH 213C Form that one or more of the required immunizations may be detrimental to the child's

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health.

B. Updated information on immunizations received shall be obtained once every six months for children under the age of two years.

C. Updated information on immunizations received shall be obtained once between each child's fourth and sixth birthdays.

§ 2.26. Physical examinations for children.

A. Each child shall have a physical examination by or under the direction of a physician before enrollment or within one month after enrollment. The schedules for examinations prior to enrollment for children are listed below:

1. Within two months prior to enrollment for children six months of age and younger;
2. Within three months prior to enrollment for children aged seven months through 18 months;
3. Within six months prior to enrollment for children aged 19 months through 24 months; and
4. Within 12 months prior to enrollment for children two years of age through five years of age.

B. Exceptions to these requirements may be made in the following instances:

1. Children transferring from a facility licensed by the Virginia Department of Social Services, certified by a local department of public welfare or social services, preschool programs licensed by the Department of Social Services, registered as a small family day home by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or approved by a licensed family day system:

a. If the initial report or a copy of the initial report of immunizations is available to the admitting facility, no additional examination is required.

b. If the initial report or a copy of the initial report is not available, a report of physical examination and immunization is required in accordance with §§ 2.26 and 2.27.

2. In accordance with subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

§ 2.27. Form and content of immunizations and physical examination reports for children.

A. The current form required by the Virginia Department of Health shall be used to report immunizations received and the results of the required physical examination. When the current Health Department form has not been used such as, but not limited to, when a child transfers from another state, other documentary proof of the child having received the required examination and immunization shall be accepted. Documentary proof may include, but not be limited to, an International Certificate of Immunization, another state's immunization form, or a physician's letterhead.

B. Each report shall include the date of the physical examination and dates immunizations were received.

C. Each report shall be signed by a physician, his designee, or an official of a local health department.

§ 2.28. Tuberculosis examination for staff.

A. Each staff member, including the licensee, administrator, and volunteer personnel, shall obtain and submit a statement that he is free of tuberculosis in a communicable form in accordance with LEA policy. The statement shall be submitted no later than five working days after employment or volunteering and shall:

1. Be dated within 30 days before or five working days after employment of the individual;
2. Include the types of tests used and the results; and
3. Include the signature of the physician, the physician's designee, or an official of a local health department.

When a staff member terminates work at one licensed facility or public school and begins work at a licensed center with a gap in service of six months or less, the previous statement of tuberculosis screening may be transferred to the licensed center. Centers newly subject to approval do not need to require staff hired prior to the implementation of these regulations to submit a statement of tuberculosis screening.

B. The tuberculosis examination shall be repeated as required by a licensed physician or the local health department.

C. Any staff member who comes in contact with a known case of tuberculosis or who develops chronic respiratory symptoms shall within one month after exposure or development receive an evaluation in accordance with subsections A and B of this section.

§ 2.29. Requirement for staff and volunteer health examination.

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A. When there is evidence that the safety of children may be jeopardized by the physical health or mental health of a staff member or volunteer, a report of examination of this person by a physician or, if appropriate, a clinical psychologist skilled in the diagnosis and treatment of mental illness shall be obtained in accordance with LEA policy. The request for obtaining an examination may come from the licensee, administrator, or department.

B. If a staff member's or volunteer's examination or test results indicate that his physical or mental condition may jeopardize the safety of children or prevent his performance of duties, the staff member shall not be allowed contact with children or food served to children. The staff member may return when his condition is cleared to the satisfaction of the physician or clinical psychologist as evidenced by a signed, dated statement from the physician or clinical psychologist.

PART III. PERSONNEL.

§ 3.1. Characteristics of staff.

A. No staff shall have been convicted of a felony or a misdemeanor related to abuse, neglect, or exploitation of children or adults.

B. All staff shall understand and be sensitive to the varying capabilities, interests, needs, and problems of children in care.

C. All staff shall be:

1. Of good character and reputation;
2. Capable of carrying out assigned responsibilities;
3. Willing and able to accept training and supervision;
4. Able to communicate effectively both orally and in writing as applicable to the job responsibility; and
5. Able to understand and apply the minimum standards in this booklet which relate to their respective responsibilities.

D. All staff who work directly with children shall have the ability to:

1. Communicate with emergency personnel and understand instructions on a prescription bottle;
2. Communicate effectively and appropriately with the age group to which the staff person is assigned;
3. Communicate effectively with parents;
4. Provide a stimulating and safe environment for the age group to which the staff person is assigned; and

5. Use materials, activities, and experiences to encourage children's growth and development.

§ 3.2. Staff holding multiple positions.

All staff who work in multiple positions within the center shall meet the qualifications for each position; however, personnel titles used in the standards are descriptive only. Centers are not required to use the same titles. The administrator or program director may have responsibilities for several centers at one site.

§ 3.3. Administrators.

A. There shall be an administrator designated to be in charge of the total operation of the center. Administrators hired after the effective date of these regulations who perform responsibilities of the program director shall be at least 21 years of age and shall possess an endorsement, or bachelor's degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children.

B. The administrator may perform staff orientation/training or program development functions if the administrator meets the qualifications of § 3.6 of these regulations and a written delegation of responsibility specifies the duties of the program director.

C. Montessori preschool programs may meet the alternative requirements in the Montessori module.

§ 3.4. Program director.

There shall be a program director designated to be responsible for developing and implementing the activities and services offered to children. There may be one program director for a center offering care to both school age and preschool children at one site or there may be two directors, according to the age of the children, for a center serving school age and preschool children. If a program director is responsible for a center with school age children and a center with children of preschool age or younger, the qualifications applicable to both school age and preschool age and younger shall apply.

§ 3.5. Program directors for centers with children of preschool age or younger.

A. Program directors hired or promoted prior to the implementation of these regulations shall have until July 1, 1996, to meet the qualifications of subsection B of this section. Program directors hired or promoted after the effective date of these regulations shall meet the qualifications of subsection B of this section immediately.

B. Program directors for centers with children of preschool age or younger shall be at least 21 years of age and possess one of the following:

1. A graduate degree in a child related field from an

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accredited college or university and six months of age appropriate, programmatic experience in the group care of children; or

2. An endorsement or bachelor's degree in a child related field from an accredited college or university and one year of age appropriate, programmatic experience in the group care of children; or

3. Montessori preschool programs may meet the alternative requirements in the Montessori module.

§ 3.6. Back-up for program directors.

A. For centers operating eight hours or more per day, if the program director is regularly present in the facility fewer than four hours per day, there shall be an officially designated person who shall assume the responsibility in the absence of the program director and meet the qualifications of § 3.5. In addition, if the program operates multiple shifts for working parents, a program director shall be regularly present for at least four hours of each shift or have a back-up program director who shall assume responsibility in the absence of the director and meet the qualifications of § 3.5. The grandfather clause as stated in subsection A of § 3.5 shall also apply to back-up program directors.

B. For centers operating eight hours or less per day, if the program director is regularly present in the facility less than 50% of the hours of operation, there shall be an officially designated person who shall assume responsibility in the absence of the program director and meet the qualifications of § 3.5. The grandfather clause stated in subsection A of § 3.5 shall also apply to back-up program directors.

C. Montessori preschool programs may meet the alternative requirements in the Montessori module.

§ 3.7. Program leaders and child care supervisors.

Program leaders and child care supervisors hired or promoted prior to the implementation of these regulations shall be at least 18 years of age and have a high school diploma or G.E.D. In addition, program leaders and child care supervisors who are hired or promoted after the effective date of these regulations and who work with children of preschool age or younger shall have until July 1, 1996, to meet the program director qualifications in § 3.5 or possess one of the following:

1. An endorsement or bachelor's degree in a child related field from an accredited college or university; or

2. Montessori preschool programs may meet the alternative requirements in the Montessori module.

3. Program leaders or child care supervisor employed on or before the implementation of these regulations

shall have until July 1, 1996, to meet these requirements.

§ 3.8. Aides.

Aides shall be at least 18 years of age, have a high school diploma or G.E.D., and shall meet the general qualifications, health, orientation training, and staff development requirements for the applicable position.

§ 3.9. Volunteer personnel.

Volunteer personnel shall meet the qualifications for the applicable position.

§ 3.10. Volunteers.

A. The duties of volunteers shall be clearly defined.

B. Volunteers who work with children of preschool age or younger shall be at least 14 years of age or meet the requirements developed by the local school board.

§ 3.11. Orientation training.

Before assuming job responsibilities, all staff shall receive the following training:

1. Job responsibilities and to whom they report;

2. The policies and procedures listed in §§ 2.14 and 2.15 that relate to the staff member's responsibilities;

3. The center's playground safety plan unless the staff member will have no responsibility for playground activities or equipment;

4. Confidential treatment of personal information about children in care and their families; and

5. The minimum standards in this booklet which relate to the staff member's responsibilities.

§ 3.12. Staff development.

A. The center shall have a plan for staff development.

B. Staff development activities to meet subsection C of this section shall:

1. Be related to children and the function of the center;

2. Consist of some sources outside the center which may include but not be limited to audio and visual tapes, conferences, and workshops;

3. Be from someone with verifiable expertise or experience when conducted as in-service training;

4. Include annually the topics of safety for children.

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child development and discipline, and playground supervision for staff; and

5. Include planned instructional objectives and an assessment component to measure achievement of the desired outcomes.

C. In addition to first aid and orientation training required elsewhere in these regulations, employed staff who work directly with children shall annually attend 16 hours of staff development activities related to child development or early childhood programming.

D. Montessori preschool programs may meet the alternative requirements in the Montessori module.

§ 3.13. Health observation of children by staff.

There shall be at least one staff member on duty at all times who has obtained instruction in performing the daily health observation of children. This instruction shall be obtained from a physician, registered nurse, or health department medical personnel at a three-year interval.

PART IV. PHYSICAL PLANT.

§ 4.1. Requirements prior to initial approval.

A. Before issuance of initial approval and before use of newly constructed, renovated, remodeled, or altered buildings or sections of buildings, written documentation of the following shall be secured, maintained, and made available to the department upon request:

1. Inspection and approval from the appropriate authority that the buildings meet building codes or that the center has an approved plan of correction; and

2. Inspection and approval from the local health department, or approval of a plan of correction, for meeting requirements for:

- a. Water supply;
- b. Sewage disposal system; and
- c. Food service, if applicable.

Any building which is currently approved for school occupancy and which houses a public school during the school year shall be considered to have met the requirements of subdivision A 1 of this section when housing a center only serving children 2 1/2 years of age or older.

B. If a building was under construction before 1978, a written statement from a Virginia licensed asbestos inspector and management planner shall be secured, maintained, and made available to the department upon

request before initial approval in order to comply with § 63.1-198.01 of the Code of Virginia. The statement shall include:

1. Verification that the building in which the child day center is located was inspected for asbestos according to the requirements of the Asbestos Hazard Emergency Response Act - 40 CFR Part 763 - Asbestos Containing Materials in Schools;

2. The dates of the inspection;

3. Whether asbestos was found in the building;

4. Signature of the licensed asbestos inspector and management planner, including the Virginia license numbers; and

5. If asbestos is found or assumed, the statement shall include:

a. The location of any significant asbestos hazard areas;

b. Verification of completion of the management plan;

c. Response actions recommended by the inspector; and

d. Verification that response actions have been completed.

C. If asbestos was found in the building, before an approval is granted, the prospective program operator shall:

1. Secure, maintain, and make available to the department upon request a signed, written statement that:

a. Response actions to remove all asbestos containing materials have been completed; or

b. The recommendations of the operations and maintenance plan will be followed, appropriate staff will receive the necessary training and documentation of required inspections will be completed.

2. Maintain documentation of removal at the center for review by the department's representative.

3. Send written notification to the parents, department, and other adult occupants of the building about the presence and location of the asbestos containing material as well as the advisement that the asbestos inspection report and operation and maintenance plan are available for review. A copy of this notification shall be submitted to the department.

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D. The asbestos requirements of subsections B and C of this section do not apply to child day centers located in a currently operating public school building or a state owned building since the asbestos requirements of these buildings are regulated by other agencies.

E. The department may request that the complete asbestos inspection report and operations and maintenance plan be submitted for review.

§ 4.2. Requirements subsequent to initial approval.

A. Every 12 months, written documentation shall be obtained and provided to the department, if requested, of inspection and approval from the appropriate fire prevention official that the center's facility complies with the Statewide Fire Prevention Code. If a center is located in a building currently housing a public school during the school year, the school's fire inspection report may be accepted in lieu of the requirements of this subsection if the inspection was completed within the past 12 months.

B. Subsequent to initial approval, and as required by the local health department, written documentation shall be provided upon request of any additional inspections and approvals, or approvals of a plan of correction, for meeting:

- 1. Water supply;*
- 2. Sewage disposal system; and*
- 3. Food service, if applicable.*

C. For those buildings where asbestos containing materials are found or assumed and not removed:

- 1. The administrator or a designated staff member shall take the required asbestos training as specified in the operations and maintenance plan for the facility;*
- 2. The administrator or a designated staff member who has received the required asbestos training shall conduct visual inspections of all asbestos containing materials according to the schedule recommended in the management plan and document the date and the findings of these inspections; and*
- 3. New parents and new adult occupants of the building shall be provided written notification of the presence and location of asbestos in the building and be advised that the asbestos inspection report and operations and maintenance plan are available for their review. A copy of this written notification shall be maintained at the center for review by the department's representative.*

D. For those buildings where asbestos containing materials have been found or assumed and asbestos has been removed, the center shall maintain at the center

documentation of that removal for review by the department's representative. Unless all asbestos containing materials have been removed, the operations and maintenance plan shall be followed for any remaining asbestos material.

E. Subsections C and D do not apply to child day centers located in a currently operating public school building or a state owned building since the asbestos requirements of these buildings are regulated by other agencies.

§ 4.3. Areas and equipment.

The facility's areas and equipment, inside and outside, shall be:

- 1. Maintained in clean and sanitary condition;*
- 2. Maintained in conditions that are safe and free of hazards such as, but not limited to, sharp points or corners, splinters, protruding nails, loose rusty parts, and objects small enough to be swallowed, except that Montessori preschool programs may meet the alternative requirements in the Montessori module; and*
- 3. Maintained in operable condition.*

§ 4.4. Heating provisions.

A. A heating system shall be provided. The heating system shall meet the following specifications:

- 1. It shall be approved by the appropriate building official;*
- 2. Heating shall not be provided by stoves;*
- 3. It shall be installed to prevent accessibility of children to the system;*
- 4. It shall have appropriate barriers to prevent children from being burned, shocked, or injured from heating equipment. In addition, proper supervision shall be available to prevent injury; and*
- 5. In case of emergency, portable electric or kerosene heaters may be used if they have been previously inspected and approved by the appropriate building official.*

B. In areas used by children, the temperature shall be maintained no lower than 68°F.

§ 4.5. Provisions for cooling in extreme conditions.

Fans or other cooling system shall be used when the temperature of areas used by children exceeds 80°F.

§ 4.6. Drinking water.

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Drinking water fountains or individual disposable cups, or both, shall be provided. Drinking water shall be available and accessible at all times.

§ 4.7. Other equipment.

Building equipment shall include, but not be limited to, the following:

- 1. Outside lighting provided at entrances and exits used by children before sunrise or after sundown;*
- 2. A working, nonpay telephone;*
- 3. First aid kit or kits; and*
- 4. Provision for locking medication as described in § 7.4.*

§ 4.8. Hazardous substances and other harmful agents.

A. No center shall be located where conditions exist that would be hazardous to the health and safety of children.

B. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept away from food preparation and storage areas and in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to the children.

C. Hazardous substances shall be stored in the original container unless this container is of such a large size that its use would be impractical.

D. If hazardous substances are not kept in original containers, the substitute containers shall clearly indicate their contents and shall not resemble food or beverage containers.

E. Cosmetics, medications, or other harmful agents of staff members shall not be stored in areas, purses or pockets that are accessible to children.

F. Hazardous art and craft materials, such as those listed in Appendix II, shall not be used with children.

§ 4.9. Other safety precautions.

In areas used by children of preschool age and younger, the following shall apply:

- 1. Steps with three or more risers shall have:*
 - a. Handrails within the normal handgrasp of the children; or*
 - b. A banister with vertical posts, between the handrail and each step, which can be safely grasped by the children. The distance between the*

posts shall be no greater than three and one half inches.

2. Fans, when used, shall be secured and out of reach of children.

3. All electrical outlets shall have protective caps or other equivalent, approved, protective devices and be of a size that cannot be swallowed by children.

§ 4.10. Activity space.

A. There shall be 35 square feet of indoor space available to each child where activities are conducted, except that centers in operation prior to the implementation of these regulations and those newly subject to approval may have until July 1, 1996, to meet this requirement.

B. Areas not routinely used for children's activities shall not be calculated as available activity space. Space not calculated shall include, but not be limited to, offices, hallways, restrooms, kitchens, storage rooms or closets, and space occupied by equipment which is not used in or does not contribute to the children's activities.

C. A place away from the children's activity area shall be designated for children who are ill, injured, tired, or emotionally upset.

D. Activity space shall be arranged so that when playing on the floor, children at each developmental stage shall be protected from children at more advanced developmental stages.

§ 4.11. Smoking prohibited.

Smoking shall be prohibited inside the center and outside the center in the presence of children, except that smoking may be allowed inside the building if it occurs in a room with a separate air circulation system from the one used for children's areas and the circulation system is vented directly to the outdoors.

§ 4.12. Other space provisions.

Space in areas used by infants shall be calculated separately from space for older children. One of the following methods to calculate available activity space for infants shall be used:

- 1. Centers shall have a minimum of 25 square feet of available activity space per infant when space occupied by cribs and changing tables is deducted from the calculation of available activity space, or*
- 2. Centers shall have a minimum of 35 square feet of available activity space per infant when space occupied by cribs and changing tables is included in the calculation of available activity space.*

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§ 4.13. Restrooms.

A. Centers shall have at least two toilets and two sinks.

B. Each restroom provided for children shall:

1. Be within a confined area;
2. Be accessible and within the building used by the children;
3. Have toilets that are all flushable;
4. Have sinks that are all equipped with running water which does not exceed 120°F; and
5. Be equipped with soap, toilet paper, and disposable towels.

C. For restrooms available to boys, urinals may be substituted for not more than one-half the required number of toilets, provided the center has at least two toilets.

D. An adult size toilet with privacy shall be provided for staff use. Staff toilets may be counted in the number of required toilets for children only if children are allowed unrestricted access to them on a routine basis.

E. Restroom areas shall have at least one toilet and one sink for every 15 preschool children. When sharing restroom areas with other programs, the children in the other programs shall be included in the toilet and sink ratio calculations. The toilet and sink ratio appropriate to the younger age group shall apply. Centers in operation prior to the implementation of these regulations and newly subject to approval may have until July 1, 1996, to meet this requirement and Montessori preschool programs may meet the alternative requirements in the Montessori module.

F. When child size toilets, urinals, and low sinks are not available in restrooms used by children of preschool age and younger, one or more platform or set of steps shall be available so that children may use adult size toilets and sinks without help or undue delay.

§ 4.14. Requirements for centers with children who are not toilet trained.

A. Centers that serve children who are not toilet trained shall provide a diapering area which allows for sight and sound supervision of children in the classroom or is accessible and within the building used by children if the staff-to-children ratios required by subdivisions 1 through 4 of § 5.2 are maintained in the classroom. The diapering area shall have at least the following:

1. A sink with running warm water not to exceed 120°F;

2. A changing table or counter equipped with a nonabsorbent surface for changing diapers of children below the age of three;

3. A nonabsorbent surface for changing diapers of children three years of age or older;

4. A leakproof storage system for diapers that is not hand operated;

5. A covered receptacle for soiled bed linens; and

6. Soap and disposable towels.

B. For every 10 children in the process of being toilet trained there shall be at least one toilet chair, or one child-sized toilet, or at least one adult sized toilet with a platform or steps and an available adapter seat. The location of these items shall allow for sight and sound supervision of children in the classroom or be accessible and within the building used by children if the staff to children ratios required by subdivisions 1 through 4 of § 5.2 are maintained in the classroom while other children are being escorted to toileting locations.

C. When only toilet chairs are used, there shall be a toilet located in an area or room in which the door is not more than 10 feet from the area used for the majority of the day by the children being toilet trained.

§ 4.15. Grandfather provisions.

Centers in operation prior to the implementation of these regulations and those newly subject to approval may have until July 1, 1996, to meet the requirements of § 4.16.

§ 4.16. Outdoor play areas.

A. The outdoor play area shall provide a minimum of 75 square feet of space per child in the area at any one time.

B. Playgrounds shall be located and designed in a way to protect children from hazardous situations.

C. While § 6.9 addresses the variety and amount of materials and equipment available for children, the specific playground equipment the center shall have is not designated. If playground equipment is provided, resilient surfacing that helps absorb the shock if a child falls off the equipment shall be placed under all fixed playground equipment with moving parts or climbing apparatus to create a fall zone free of hazardous obstacles. Fall zones are defined as the area underneath and surrounding equipment that requires a resilient surface. It shall encompass sufficient area to include the child's trajectory in the event of a fall while the equipment is in use. For recommendations concerning resilient surfacing, see Appendix III.

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Montessori preschool programs may meet the alternative requirements in the Montessori module.

D. Ground supports shall be covered with materials which would protect children from injury.

E. Equipment used by children shall:

1. Have no accessible openings between 3 1/2 inches and nine inches;
2. Have closed S-hooks when provided; and
3. Have no protrusions, sharp points, shearing points, or pinch points.

F. All outdoor swing seats shall be made of flexible material except for infant swings if they are specifically designed to provide the necessary support required for infants and if the swings are located in a separate area where no other children can enter or walk around in the protected swing area.

G. Sandboxes with bottoms which prevent drainage shall be covered when not in use.

H. For activity areas, both inside and outside, that are used by toddlers and preschool children, the climbing portion of slides and climbing equipment shall not be more than seven feet high.

I. Centers licensed for the care of infants and toddlers shall provide a separate playground area for these children which has at least 25 square feet of unpaved surface per infant/toddler on the outdoor area at any one time. This unpaved surface shall be suitable for crawling infants and for toddlers learning to walk. This space may be counted as part of the 75 square feet required in § 4.16.

PART V. STAFFING AND SUPERVISION.

§ 5.1. General provisions.

A. All aides, volunteer personnel, and volunteers shall be under the individual supervision of a staff member on site who meets the qualifications of a program leader, child care supervisor or program director.

B. Each person serving in the positions of a program director, back-up program director, program leader or child care supervisor shall not be responsible for the individual supervision of more than two aides at any one time. In a training environment, aides used beyond the required staff-to-children ratio of subdivisions 1 through 4 of § 5.2 shall not be included in the above requirement.

C. When with children, contract employees shall be sight supervised by a staff member unless the contract employee meets the personnel, health, and orientation

training requirement for the applicable position.

D. All staff assigned responsibility for supervision of children shall ensure their care, protection, and guidance at all times. At no time shall supervisory responsibility be given to children under the age of 14.

E. During the center's hours of operation, one adult on the premises shall be in charge of the administration of the center. This person shall be either the administrator or an adult appointed by the school division or designated by the administrator.

F. There shall be in each building of the center and on field trips at all times when one or more children are present:

1. At least two staff, one of whom meets the qualifications of a program leader, child care supervisor or program director; or

2. One staff member who meets the qualifications of a program leader, child care supervisor or program director and a readily available designated support person with direct means for communication between the two of them.

G. In each grouping of children at least one staff member who meets the qualifications of a program leader, child care supervisor or program director shall be regularly present.

H. Children under 10 years of age shall be within actual sight and sound supervision of staff at all times, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to assure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children, and

2. Staff check on a child who has not returned from the restroom after five minutes.

I. When the outdoor activity area is not adjacent to the center, there shall be at least two staff on the outdoor activity area whenever one or more children are present.

J. Staff shall greet each child upon arrival at the center and oversee each child's departure from the center.

K. Staff shall ensure the immediate safety of a child during diapering.

L. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

M. A child volunteer not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements.

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N. When children are regularly in ongoing mixed age groups, the staff-to-children ratio applicable to the youngest child in the group shall apply to the entire group, except that Montessori preschool programs may meet the alternative requirements in the Montessori module.

O. During the designated rest period, the number of staff directly supervising children may be reduced if:

1. A staff person is within sight and sound of the resting/sleeping children, and
2. Sufficient staff to provide the regular adult-child ratio are within the facility and available to assure safe evacuation in an emergency.

§ 5.2. Staff-child ratios.

In each grouping of children, the following ratios of staff-to-children are required wherever children are in care:

1. For children from birth to the age of 16 months: one staff member per four children;
2. For children 16 months old to two years: one staff member per five children;
3. For children from two years to four years: one staff member per 8 children with no group larger than 16;
4. For children from four years to the age of eligibility to attend public school, five years by September 30: one staff member per 10 children with no group larger than 20. Programs serving children of this age group who have been identified as "at-risk" shall have a ratio of 8-1 with no group larger than 16; and
5. Montessori preschool programs may meet the alternative requirements in the Montessori module.

PART VI. PROGRAMS, ACTIVITIES, PARENTAL INVOLVEMENT, EQUIPMENT, BEHAVIOR GUIDANCE.

§ 6.1. Center schedule.

A. There shall be a predictable sequence to the day for children 16 months or older but the schedule shall be flexible, based on children's needs.

B. For centers operating more than two hours per day or more than two hours per session per day, outdoor activity shall be provided daily, weather allowing, according to the following:

1. If the center operates between two and five and

one-half hours per day or per session, there shall be at least 30 minutes of outdoor activity per day or per session.

2. If the center operates more than five and one-half hours per day or per session, there shall be at least one hour of outdoor activity per day or per session.

3. Outdoor activity is not required on days when an all day field trip occurs and Montessori preschool programs may meet the alternative requirements in the Montessori module for subdivision 2 of this subsection.

C. Staff shall provide opportunities for children to engage in self-chosen tasks and activities and allow children to learn from self-directed problem-solving and experimentation.

D. The daily schedule which describes the typical sequence of daily activities for toddlers and preschoolers shall be posted in a place conspicuous to parents and staff.

E. There shall be a flexible schedule for infants based on their individual needs.

§ 6.2. Rest periods.

A. Centers operating five or more hours per day or per session shall have a designated rest period for preschool children and toddlers in attendance at the time of the rest period.

B. For centers operating five or more hours per day or per session, the following requirements for preschool children and toddlers during the designated rest period shall apply:

1. The rest period shall be at least one hour but no more than two hours unless children are actually sleeping;

2. Cots, beds, or rest mats shall be used during the rest period; and

3. After the first 30 minutes of a rest period, nonsleeping children shall be allowed to participate in quiet activities, which may include, but not be limited to, books, records, puzzles, coloring, or manipulatives.

§ 6.3. Developmentally appropriate activities.

A. The daily activities shall be developmentally appropriate and promote the individual child's physical, intellectual, emotional, and social well-being and growth as well as promoting curiosity and exploration.

B. To promote emotional development, the center shall provide for:

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1. Opportunities for individual self-expression;
2. Recognition that each child is an individual;
3. Respect for personal privacy; and
4. Respect for each child's cultural, ethnic, and family background as well as the child's primary language or dialect.

C. To promote social development, the center shall provide:

1. Guidance to children in developing and working out ways of getting along with one another;
2. Staff interaction with children in ways which emphasize and foster attitudes of mutual respect between adults and children; and
3. Staff behavior which demonstrates respect for all other persons as individuals and appreciation of cultural and ethnic diversity.

D. The center shall provide for the self-direction of the children by:

1. Allowing children opportunities to choose activities according to personal desires and interests and to move freely from one activity to another;
2. Encouraging children to do things independently and to help with daily routines as appropriate to the child's developmental level but to be available to comfort and help when needed; and
3. Supporting children's friendships and providing children opportunities to be involved in decision making about group and individual activities.

E. A variety of children's activities shall be provided that allow for group and individual involvement and child and staff initiation.

§ 6.4. Assistance with activities.

For children who cannot move without help, staff shall offer to change the places and position of the child and the selection of toys or objects available to the child at least every 30 minutes or more frequently depending on the individual needs of the child.

§ 6.5. Other activities.

A. The center shall provide a balance of active and quiet activities.

B. Children of all ages shall be allowed to rest or sleep as needed on cribs, cots, mats, or beds, as appropriate.

C. Resting or sleeping infants and toddlers shall be

individually checked at least every 30 minutes.

D. Daily activities and experiences for preschool children, which are explained in Appendix IV, shall include, but not be limited to:

1. Art activities;
2. Rhythm, movement, and music;
3. Language and communication experiences;
4. Sensory experiences and exploration of the environment;
5. Construction;
6. Social living;
7. Water and sand play;
8. Small motor activities; and
9. Large motor activities.

Montessori preschool programs may meet the alternative requirements in the Montessori module.

§ 6.6. Toddlers' activities.

A. For toddlers, the center shall provide daily equipment and opportunities for sensory and perceptual experiences, large and small motor development, and language development.

B. Daily activities and experiences for toddlers, which are explained in Appendix V, shall include, but not be limited to:

1. Art activities;
2. Rhythm, movement, and music;
3. Language and communication experiences;
4. Sensory experiences and exploration of the environment;
5. Construction;
6. Social living;
7. Water and sand play;
8. Small motor activities; and
9. Large motor activities.

C. Staff shall encourage language development by one-to-one face-to-face conversations giving toddlers time to initiate and respond; labeling and describing objects

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and events; helping children put feelings into words; and expanding on toddler language.

D. Staff shall express affection, support toddler's growing independence such as dressing and eating, and making choices in activities and routines.

E. Staff shall support toddler's developing self-control by expressing feelings with words, giving positively worded directions, and modeling and redirecting behavior.

F. Parents of toddlers shall receive daily verbal feedback about:

1. Daily activities;
2. Physical well-being; and
3. Developmental milestones.

§ 6.7. Infants' activities.

A. For infants, the center shall provide daily equipment and opportunities for sensory and perceptual experiences, large and small motor development, and language development.

B. Staff shall promptly respond to infants' needs for food and comfort.

C. Infant play spaces may include but not be limited to cribs, infant seats, infant swings, high chairs, and floor area and shall:

1. Offer opportunities for least restrictive environment;
2. Offer a diversity of experiences for the infant; and
3. Provide frequent opportunities to creep, crawl, toddle, and walk.

D. An awake infant not playing on the floor or ground shall be provided a change in play space at least every 30 minutes, and more often as determined by the needs and demands of the individual infant. For awake infants playing on the floor or ground, staff shall change the position of the infant and the selection of toys available to the infant every 30 minutes or more often as determined by the needs and demands of the individual infant.

E. An infant or toddler who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his own crib, cot, mat, or bed.

F. Stimulation shall be regularly provided for infants in a variety of ways including being held, cuddled, talked to, and played with by staff.

G. For each infant, the center shall post a daily record which can be easily seen by both the parent and by the

staff working with the children. The record shall include the following information:

1. The amount of time the infant slept;
2. The amount of food consumed and the time;
3. A description and the time of bowel movements; and
4. Developmental milestones.

§ 6.8. Parental involvement.

A. The center shall be open for parents to visit and observe their children at any time as stated in § 63.1-210.1 of the Code of Virginia or in accordance with local school board policy.

B. The center shall encourage parental involvement on a volunteer basis in appropriate center activities.

C. Staff shall frequently and in person make direct contact with parents to share information about their child's health, development, behavior, adjustment, and needs.

§ 6.9. Equipment and materials.

A. All furnishings, equipment, and materials shall be of a developmentally appropriate size for the child using it.

B. The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be developmentally appropriate for the children and shall include equipment and materials which:

1. Are in sufficient supply to avoid excessive competition among the children and to avoid long waits for use of the materials and equipment;
2. Provide for a variety of experiences and appeal to the individual interests and abilities of children;
3. Are accessible to children for the activities required by these standards;
4. Allow children to use small and large muscles for imaginative play and creative activities; and
5. Include multicultural materials.

C. Indoor slides and climbing equipment shall not be over bare concrete, hardwood floors, masonry, vinyl, tile surface or similar surface.

D. Storage space for play materials and equipment used by the children shall be accessible to children either independently or with help.

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E. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

F. All disposable products shall be used once and discarded.

G. Disposable dishes and utensils shall be sturdy enough to contain food without leakage and to prevent harm and injury to children.

H. Individualized space such as, but not limited to, lockers or cubbies for each preschool and younger child's clothing and personal items shall be provided.

I. In each classroom grouping of children of preschool age or younger, at least one area, shelf, or cupboard space where materials can be readily and freely chosen by children during active play periods shall be available.

J. Equipment and play materials for infants shall include, but not be limited to balls, busy boards, books, rattles, dolls, play mats, soft blocks, nesting and stacking toys, squeeze toys, music boxes, and mirrors placed where infants can see themselves.

K. Playpens and infant walkers shall not be used.

§ 6.10. Cribs, cots, rest mats and beds.

A. Cribs, cots, rest mats or beds shall be provided to children present during the designated rest period and no more than one child at a time shall occupy a crib, cot, rest mat, or bed.

B. Cribs, cots, rest mats, and beds shall be marked or identified in some way for use by a specific child.

C. Double decker cribs, cots, or beds, or other sleeping equipment which is stacked shall not be used.

D. Occupied cribs, cots, rest mats, and beds shall be at least 2 1/2 feet from any heat source in use.

E. There shall be at least 15 inches of space between sides and ends of occupied cots, beds, and rest mats, except that 15 inches of space are not required where cots, beds, or rest mats touch the wall or where screens are placed between cots or beds as long as one side is open at all times to allow for passage.

F. If rest mats are used, they shall have comfortable cushioning and be sanitized between each use.

G. Cribs shall be used for children under 12 months of age and for children over 12 months of age who are not developmentally ready to sleep on a cot or mat.

H. Cribs shall meet the following requirements:

1. They shall meet the Consumer Product Safety Commission Standards at the time they were made;

2. There shall be no more than six centimeters or 2 3/8 inches of space between slats;

3. Mattresses shall fit snugly next to the crib; and

4. End panel cut-outs in cribs shall be of a size not to cause head entrapment.

I. No cribs shall be placed where objects outside the crib such as cords from blinds or curtains are in reach of infants or toddlers.

J. There shall be at least:

1. Twelve inches of space between the sides and ends of occupied cribs except where they touch the wall, and

2. Thirty inches of space between service sides of occupied cribs and other furniture when that space is the walkway for staff to gain access to any child in any crib.

K. Crib sides shall always be up and the fastenings secured when a child is in the crib, except when staff is giving the child immediate attention.

L. Pillows shall not be used by children under two years of age.

M. No toys shall be hung over or attached to cribs.

§ 6.11. Linens.

A. Linens for cribs, cots, rest mats, or beds shall consist of a top cover and a bottom cover or a one-piece covering which is open on three edges.

B. Linens shall be assigned for individual use.

C. Linens shall be maintained in clean and sanitary condition and shall be washed at least weekly except for crib sheets which shall be cleaned daily.

D. When pillows are used, they shall be assigned for individual use and covered with pillowcases.

E. Mattresses when used shall be covered with a waterproof material which can be easily sanitized.

§ 6.12. Discipline.

A. Discipline shall be constructive in nature and include techniques such as:

1. Using limits that are fair, consistently applied, and appropriate and understandable for the child's level;

2. Providing children with reasons for limits;

3. Giving positively worded directions;

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4. Modeling and redirecting children to acceptable behavior;

5. Helping children to constructively express their feelings and frustrations to resolve conflict; and

6. Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior.

B. There shall be no physical punishment or disciplinary action administered to the body such as, but not limited to, spanking; roughly handling a child; forcing a child to assume an uncomfortable position (e.g., standing on one foot, keeping arms raised above or horizontal to the body); restraining to restrict movement through binding or tying; enclosing in a confined space, box, or similar cubicle; or using exercise as punishment.

C. A child shall not be shaken at any time.

D. Staff shall not be verbally abusive which would include, but not be limited to, threats, belittling remarks about any child, his family, his race, his religion, or his cultural background, or other statements that are frightening or humiliating to the child.

E. When disciplining a child, staff shall not:

1. Force, withhold, or substitute food;

2. Force or withhold naps; or

3. Punish a child for toileting accidents.

F. When separation is used as a discipline technique, it shall be brief and appropriate to the child's developmental level and circumstances. The child who is separated from the group shall be in a safe, lighted, well-ventilated place and shall be within hearing and vision of a staff member.

G. No child, for punishment or any other reason, shall ever be confined in any space that the child cannot open, such as but not limited to closets, locked rooms, latched pantries, or containers.

H. Staff shall not give a child authority to punish another child nor shall staff consent to a child punishing another child.

I. Staff shall follow the center's policy on acceptable and unacceptable discipline methods.

J. Behavior problems of children of preschool age and younger shall be dealt with promptly.

§ 6.13. Staff and supervision of swimming and wading activities.

A. The staff-child ratios required by subdivisions 1 through 4 of § 5.2 shall be maintained while children are participating in swimming or wading activities. The

designated water safety instructor or senior lifesaver shall not be counted in the staff-to-children ratios.

B. If a pool, lake, or other swimming area has a water depth of more than two feet, a water safety instructor or senior life saver holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water. The certification shall be obtained from an organization such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

C. A minimum of two staff members of the center shall be on duty supervising the children during swimming or wading activities when one or more children are in the water.

§ 6.14. Pools and equipment.

A. When permanent swimming or wading pools are located on the premises of the center, the following shall apply:

1. The manufacturer's specifications for operating the pool shall be followed as well as any local ordinance and any Department of Health requirements for swimming pools;

2. All pools constructed, renovated, or remodeled after April 1, 1986, shall have a statement in writing of their inspection and approval from the local building official when such appraisal is required;

3. Outdoor swimming pools shall be enclosed by safety fences and gates which shall be kept locked when the pool is not in use;

4. Entrances to swimming pools shall be locked when the pool is not in use; and

5. A whistle or other audible signaling device, a buoy or a lemon line, a reach pole, and a backboard shall be available at the swimming or wading site.

B. If children are allowed to swim in a lake or other place other than a pool, safe swimming areas shall be clearly marked.

C. All piers, floats, and platforms shall be in good repair and where used for diving, the minimum water depth shall be indicated on the deck or planking.

D. If children are allowed to swim at a lake or other body of water larger than a pool, there shall be a rescue boat available at all times which is equipped with a reach pole and a lemon line or buoy.

E. If portable wading pools are used, they shall be emptied of dirty water and filled with clean water for each day's use and more frequently as necessary.

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§ 6.15. Swimming and wading emergency procedures and safety rules.

A. The center shall have emergency procedures and written safety rules for swimming or wading that are:

1. Posted in the swimming area when the pool is located on the premises of the center;
2. Given to staff involved in swimming or wading activities;
3. Given to parents of children participating in swimming or wading activities; and
4. Explained to children participating in swimming or wading activities.

B. Staff shall have a system for accounting for all children in the water.

C. Each child's swimming skills shall be determined before the child is allowed in water above the child's shoulder height.

D. Outdoor swimming activities shall occur only during daylight hours unless underwater and deck lighting is provided.

E. Children who are not toilet trained shall not use portable wading pools.

PART VII.

SPECIAL CARE PROVISIONS AND EMERGENCIES.

§ 7.1. Special care.

A. If a child arrives at the center with the signs or symptoms listed in subsection C of this section, the child shall not be allowed to attend for that day.

B. Staff with training as required in § 3.13 shall observe daily each child for signs and symptoms of illness.

C. Unless otherwise instructed by the child's health care provider, that child shall be excluded if:

1. He has a temperature over 100°F, or
2. He has a communicable disease as delineated in the current Communicable Disease Chart recommendations for the exclusion of sick children.

D. If a child needs to be excluded according to subsection C of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are noticed, and
2. The child shall remain in the designated quiet area

until leaving the center.

E. When a child at the center has been exposed to a reportable communicable disease, the parent shall be informed.

F. Children's hands shall be washed with soap and water before eating meals or snacks, after toileting, and after any contact with body fluids.

G. Staff shall wash their hands with soap or germicidal cleansing agent and water after helping a child with toileting, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding.

H. When a child's clothing or diaper becomes wet or soiled, it shall be changed immediately.

§ 7.2. Children not toilet trained.

A. The child's soiled area shall be thoroughly cleaned with a disposable wipe during each diapering.

B. Staff shall wash their hands with soap or germicidal cleansing agent and water after each diaper change.

C. Disposable diapers shall be used for children in diapers unless the child's skin reacts adversely to disposable diapers. If cloth diapers are used, there shall be separate step-on diaper pails for the cloth and disposable diapers.

D. Toilet chairs shall be emptied promptly and sanitized after each use.

E. Surfaces for changing diapers shall be used only for changing diapers or cleaning children.

F. Diapers shall be changed on a nonabsorbent surface which shall be washed with soap and warm water or a germicidal cleansing agent after each use.

G. Tables used for children's activities or meals shall not be used for changing diapers.

§ 7.3. Prescription and nonprescription medication.

Prescription and nonprescription medication shall be given to a child according to the division's written policy and the center's written medication policies and only with written authorization from the parent.

§ 7.4. Medication policies.

A. The center's medication policies shall address methods for administering medication and shall include:

1. Any general restrictions of the center;
2. Duration of the parent's authorization for

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medication, provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use may be excepted if a form such as the one in Appendix VII is completed and on file; and

3. Methods to prevent use of outdated medication.

B. The medication authorization shall be available to staff during the entire time it is effective.

C. All medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the times to be given.

D. All medication shall be in the original container with the prescription label or direction label attached.

E. When needed, medication shall be refrigerated. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

F. All medication, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to the children.

G. Centers shall keep a log of medication given children which shall include the following:

1. Child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child; and
4. Staff member administering the medication.

H. Medication shall be returned to the parent as soon as the medication is no longer being administered.

§ 7.5. First aid provisions.

A. There shall be at least one staff member on the premises during the center's hours of operation and also one person on all field trips who is trained in first aid and CPR. This person shall be available to children and meet one of the following qualifications for first aid training:

1. Has a current first aid and CPR certificate by the American Red Cross;
2. Has a current first aid certificate by the National Safety Council;
3. Has successfully completed, within the past three years, a first aid course equivalent to the curriculum

which has been approved by the State Board of Health;

4. Be a R.N. or L.P.N. with a current license from the Board of Nursing.

B. A first aid kit shall be on each floor of each building used by children and on all field trips.

C. The required first aid kits shall include, at a minimum, scissors, tweezers, gauze pads, adhesive tape, band-aids in assorted types, an antiseptic cleansing solution, an antibacterial ointment, thermometer, two or more triangular bandages, disposable gloves, and the first aid instructional manual.

D. Each first aid kit shall be stored so that it is not available to children but is easily available to staff.

§ 7.6. Emergency supplies.

The following emergency supplies shall be required:

1. Syrup of ipecac or activated charcoal preparation (to be used only upon the advice of the physician or the Poison Control Center);
2. Chemical cooling agents, zip-lock bags, and sponges readily available for icing down contusions, sprains, and breaks;
3. A working, battery-operated flashlight on each floor of each building of the facility that is used by children; and
4. One working, battery-operated radio in each building of the facility used by children and any camp location without a building.

§ 7.7. Procedures for emergencies.

A. The center shall have an emergency evacuation plan that addresses staff responsibility with respect to:

1. Sounding of fire alarms and notification of local authorities;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, and checking to ensure complete evacuation of the buildings;
3. Fire containment procedures, e.g., closing of fire doors or other barriers; and
4. Other special procedures developed with local authorities.

B. Emergency evacuation procedures shall be posted in a location conspicuous to staff and children on each floor of each building of the center.

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C. The center shall implement these emergency evacuation procedures through monthly practice drills and shall maintain a log of the dates of the monthly drills for one year. For centers offering multiple shifts, the evacuation procedures shall be divided evenly among the various shifts.

D. A generic emergency number such as 911 shall be posted in a conspicuous place near each telephone. If a generic number is not available, the following numbers shall be posted near each phone:

1. A physician or hospital;
2. An ambulance or rescue squad service;
3. The local fire department; and
4. The local police department.

E. The number of a regional poison control center shall be posted in a conspicuous place near each phone.

F. The center shall develop a plan for action in case of a missing or injured child which shall address:

1. Immediate notification of emergency services;
2. Stabilization of injured child; and
3. Transportation of injured child if necessary.

G. If an ambulance service is not readily available within 10 to 15 minutes, other transportation shall be available at all times in case of emergency.

§ 7.8. Parental notification in emergencies.

The center or other appropriate official shall notify the parent immediately if a child is lost, experiences a serious accident, needs emergency medical care, or dies. The center shall notify the parent at the end of the day of any known minor accidents or injuries. Examples of a serious accident might include unconsciousness; broken bones; deep cut requiring stitches; concussion; foreign object lodged in eye, nose, ear, or other body orifice. Examples of a minor accident might include a small scratch, cut or scrape; minor bruise or discoloration of the skin.

§ 7.9. Emergency log required.

The center shall maintain a written log of children's injuries in which entries are made the day of occurrence. The log shall include the following:

1. Date and time of injury;
2. Name of injured child;
3. Type of injury;

4. Circumstances of the injury;
5. Names of staff present during the injury;
6. Treatment; and
7. Method of notifying parents.

PART VIII. SPECIAL SERVICES, NUTRITION, TRANSPORTATION.

§ 8.1. Snacks and meals.

A. Centers shall serve appropriate snacks or meals, or both, based on the hours of operation and time of the day. Where the federal and state statutes and regulations exceed these requirements, those shall take precedence.

B. The center shall ensure that children arriving from a half-day morning kindergarten program who have not yet eaten lunch receive a lunch.

C. There shall be at least one and one-half hours between each meal and snack but no more than three hours between meals and snacks.

D. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

E. In environments of 80°F or above, constant attention shall be given to the fluid needs of all children. Children in such environments shall be encouraged to drink fluids.

F. Centers serving children of preschool age or younger shall provide appropriate meals for these children as provided in these standards. When food is provided by the center, the following shall apply:

1. Centers providing care to the same children more than four hours a day shall comply with the nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA) or the meal patterns in Appendix VIII.
2. Centers offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week. Appendix IX lists sources of vitamin A and vitamin C.

3. A menu listing all foods to be served for all meals and snacks during the current one-week period shall be:

- a. Dated;
- b. Posted in a location conspicuous to parents or given to parents;

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c. Indicate any substituted food; and

d. Kept on file for six weeks at the center.

4. Powdered milk shall be not be used except for cooking.

5. Programs are not required to provide meals for children of preschool age or younger if the children attend four or fewer hours per day. Programs in operation prior to the implementation of these regulations and newly subject to approval may have until July 1, 1996, to provide meals.

G. When food is brought from home, the following shall apply:

1. The food shall not be subject to rapid deterioration or spoilage;

2. The center shall give parents the USDA requirements and a list of suggested nonperishable food. Appendix IX has the requirements of USDA.

3. The food shall be clearly labeled in a way that identifies the owner;

4. The center shall have extra food or shall have a plan available to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

5. All unused portions of food shall be discarded and not served again.

H. If a catering service is used, it shall be approved by the local health department.

I. Food during cookouts.

1. All food shall be prepared in a clean and sanitary manner.

2. Unused, perishable food shall be discarded and not served again.

J. Children of preschool age and younger shall be encouraged to feed themselves.

K. During meal and snack times with preschoolers and toddlers, staff shall sit with these children when not serving food to them.

L. Foods easily causing choking, such as but not limited to hard candy, popcorn, raisins, seeds, nuts, whole hot dogs, hot dogs sliced into rounds, and uncut grapes, shall not be served to children three years of age or younger.

§ 8.2. Provisions for infants.

A. High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months who are not held while being fed.

B. The record of each child on formula shall contain:

1. The brand of formula, and

2. The child's feeding schedule.

C. Infants shall be fed on demand or in accordance with parental instructions.

D. Prepared infant formula shall be refrigerated and clearly labeled in a way that identifies the child. See Appendix X for recommendations about the safe use of microwaves to heat infant formula.

E. Bottle fed infants who cannot hold their own bottles shall be picked up and held when fed. Bottles shall not be propped.

F. No child shall be allowed to drink or eat while walking around.

G. Formula, bottled breast milk, and prepared baby food not consumed by an infant may be used by that same infant later in the same day, if dated and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day.

H. A one-day's emergency supply of disposable bottles, nipples, and commercial formulas appropriate for the children in care shall be maintained at the facility.

I. Mothers shall be allowed to breast-feed their infants at the facility.

J. Unless written instructions from a physician indicate differently, staff shall feed semisolid food with a spoon.

K. Children using infant seats or high chairs shall be carefully supervised during snacks or meals. When a child is placed in an infant seat or high chair the protective belt shall be fastened securely.

§ 8.3. Provisions for transportation.

A. If the center transports children to the site of the center, the center shall assume responsibility for the child between the place where the child boards the vehicle and the center site, while at the center and on any center field trips, and from the time the child leaves the center site until the child is delivered to a designated location or to a responsible person designated by his parent.

B. Any vehicle used by the center for the transportation of children shall meet the following requirements:

1. The vehicle shall be enclosed and provided with door locks;

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2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits set by the Virginia state statutes; and
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children.

C. The center shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked;
4. At least one staff member or the driver always remain in the vehicle when children are present;
5. The telephone numbers for obtaining emergency help as stated in § 7.7 are in the vehicle and available to staff;
6. The name, address, and phone number of the center and an additional emergency contact number is in the vehicle and available to staff; and
7. A list of the names of the children being transported is kept in the vehicle.

D. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

E. When necessary to cross streets, children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

§ 8.4. Field trips.

A. The staff-to-children ratios of subdivisions 1 through 4 of § 5.2 shall be followed on all field trips but not necessarily in each vehicle. The staff-to-children ratios may not be followed during transportation of children to and from the center. Montessori preschool programs may meet the alternative requirements in the Montessori module.

B. At least one staff member on field trips shall be trained in first aid according to subdivisions A 1 through A 4 of § 7.5 and shall be instructed on procedures to follow if there is a vehicle break down.

C. A first aid kit with the supplies mentioned in § 7.5 C, syrup of ipecac or activated charcoal preparation, and chemical cooling agents for icing down contusions, sprains, and breaks shall be available to staff on field

trips.

D. The center shall make provisions for providing children on field trips with adequate food and water.

E. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

F. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

G. There shall be an established plan of communication between staff at the center site and staff who are away from the center site transporting children or on a field trip.

H. The center shall develop and implement procedures to assure that all children return to the facility after a field trip.

I. Staff shall follow the center's transportation safety policy.

J. Parental permission for transportation and field trips shall be secured at least 24 hours before the scheduled activity. If a blanket permission is used instead of a separate written permission, the following shall apply:

1. Parents shall be notified of the field trip; and
2. Parents shall be given the opportunity to withdraw their children from the field trip.

§ 8.5. Animals.

A. Animals that are kept on the premises of the center shall be vaccinated if applicable against diseases which present a hazard to the health of children.

B. Animals which are, or are suspected of being, ill or infested with external lice, fleas and ticks or internal worms shall be removed from contact with children.

C. If a child is bitten by an animal, an attempt shall be made to confine the animal for observation or laboratory analysis for evidence of rabies. The site of the bite shall be washed with soap and water immediately, and the child's physician or local health department shall be contacted as soon as possible for medical advice. The center shall report the animal bite incident to the local health department.

§ 8.6. Resting.

A. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

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B. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

C. For overnight care which occurs for a child on a weekly or more frequent basis, beds with mattresses shall be used.

D. In addition to § 6.11, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

§ 8.7. Overnight care.

A. In centers providing overnight care, an operational tub or shower with heated and cold water shall be provided.

B. When bath towels are used, they shall be assigned for individual use.

C. Activities for children in evening or overnight care shall include, as time allows, age appropriate activities as described in §§ 6.5 D, 6.6 A through E, and 6.7 A through F.

Quiet activities and experiences shall be available immediately before bedtime.

D. For children receiving evening and overnight care, the provider shall offer a regularly scheduled evening meal and snack.

PART IX. MONTESSORI MODULE.

§ 9.1. Montessori programs defined.

A. Montessori preschool programs are educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori, thus verifying that the school meets the Montessori standards as outlined in the Montessori module.

B. Meeting these Montessori standards shall afford the Montessori preschool programs a waiver from specific minimum standards that conflict with the Montessori educational philosophy as referenced in the regulations. Only preschools which meet the Montessori criteria as outlined in the module are eligible to comply with the modified licensing standards contained in the Montessori module.

C. Programs operated by a Montessori preschool which go outside the scope of the regular Montessori preschool classes shall comply with the minimum standards for licensed child day centers without the benefit of the Montessori module for the extended care portion of the

day. Programs going beyond four hours per day for children ages 2 1/2 through four and beyond 6 1/2 hours per day for children five through six years of age, exclusive of the allowable two hour additional enrichment program once a week, shall comply with the minimum standards for licensed child day centers without the benefit of the Montessori module for the extended care portion of the day. Regular Montessori preschool classes within an all day program shall meet the minimum standards for licensed child day centers with the option of meeting the Montessori module to obtain waivers from specified standards that conflict with the Montessori philosophy for the regular day portion of their program only.

§ 9.2. Administrators.

The administrator of a Montessori preschool program shall be at least 21 years of age and shall have or meet one of the following:

1. An endorsement or bachelor's degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children;

2. An associate degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children;

3. The teacher qualification standards of American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori; or

4. Five years of Montessori programmatic experience if the program director meets one of the qualifications of subdivisions 1 through 3 of this section.

§ 9.3. Program directors and back-up program directors.

The program director and back-up program director at a Montessori preschool program shall be at least 21 years of age and shall have or meet one of the following:

1. An endorsement or bachelor's degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children; or

2. An associate degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children; or

3. The Montessori teacher qualification standards of American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori; or

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4. Five years of Montessori programmatic experience.

§ 9.4. Teachers.

Montessori teachers at a Montessori preschool program shall:

1. Be at least 21 years of age, and
2. Hold a teaching diploma recognized by American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori for the level the teacher is teaching.

§ 9.5. Staff development.

A. In addition to first aid and orientation training required elsewhere in these regulations, employed staff who work directly with a single group of children for more than three hours daily at a Montessori preschool program shall:

1. Take advantage of formal and informal opportunities for personal and professional growth, including methodology and specific subject matter, as recognized by Montessori standards for a minimum of eight hours annually; or
2. In the event of a staff member's participation in a credit course or a seminar longer than eight hours, these hours may be prorated over a period of no more than five years at the rate of 12 hours annually.

B. Specialty staff at a Montessori preschool program providing enrichment activities to a single group of children less than three hours a week shall take advantage of opportunities for professional growth to remain current in their field of expertise.

§ 9.6. Facilities.

The facilities of a Montessori preschool program, inside and outside, shall be maintained in conditions that are safe and free of hazards, protruding points or sharp corners, splinters, protruding nails, and loose rusty parts.

§ 9.7. Materials.

The Montessori materials at a Montessori preschool program shall be maintained in an attractive, accessible, and safe manner, so as to afford the children complete and appropriate opportunity to develop individual and group skills according the Montessori curriculum standard.

§ 9.8. Restrooms.

A Montessori preschool program shall have restrooms that are easily accessible with a ratio of one toilet and one sink for every 20 children.

§ 9.9. Outdoor play areas.

A Montessori preschool program shall have a safe outdoor play area which allows for exploration of nature and provides a resilient surface in fall zones.

§ 9.10. Groupings.

Montessori preschool program shall maintain a balanced multi-age grouping, with a ratio of one staff member for every 15 children.

§ 9.11. Activities.

Teachers at a Montessori preschool program shall be, at all times during the Montessori program, responsible for the development and activities of the children in his Montessori class. In the event of the teacher's extended absence, there shall be sufficient substitute staff to comply with a ratio of one staff member for every 12 children.

§ 9.12. Other personnel requirements.

A Montessori preschool program shall have readily accessible, and in close classroom proximity, auxiliary persons sufficient to maintain a 1:10 adult-to-child ratio for 2 1/2 to four year olds or 1:15 for balanced mixed age groupings of 2 1/2 to six year olds, to be available in the event of emergency evacuation.

§ 9.13. Space provisions.

A Montessori preschool program shall offer outdoor and indoor space affording the children complete opportunity to develop individual and group skills, including large and small motor development.

§ 9.14. Operations.

In a Montessori preschool program operating between five and 6 1/2 hours per day there shall be at least one-half hour of outdoor activity per day.

§ 9.15. Instruction.

A Montessori preschool program shall abide by the pedagogy and curriculum guidelines in the Montessori module.

§ 9.16. Transportation.

During transportation of children and on all field trips, the staff-to-children ratio for a multi-age grouping of students in a Montessori preschool program shall be no more than one to 20.

§ 9.17. Hours and scope of operation.

A. A Montessori preschool program shall operate, at a minimum, nine months a year, five days a week, allowing for holidays, teacher in-service days, and parent-teacher

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conferences, as deemed necessary by the preschool in accordance with Montessori standards.

B. The hours of operation for a Montessori preschool program for children, ages 2 1/2 through four years, shall be at least three hours a day, but not more than four hours a day.

C. The hours of operation for a Montessori preschool program for children five through six years of age shall be at least six hours a day but no more than 6 1/2 hours a day.

D. Enrichment programs, compatible with Montessori standards shall be acceptable when operated, in keeping with the Montessori curriculum; physical, emotional, and developmental welfare of the child; and available to the individual child not more than an additional two hours once a week.

E. Any program operated beyond these specified school hours and ages of children shall comply with the minimum standards for licensed child day centers without the benefit of the Montessori module for the extended care portion of the day. Regular Montessori preschool classes within an all day program shall meet the minimum standards for licensed child day centers with the option of meeting the Montessori module to obtain waivers from specified standards that conflict with the Montessori philosophy for the regular day portion of their program only.

§ 9.18. Montessori class structure and supervision.

A. A class shall be deemed a group of children under the direct and continuous supervision of a fully qualified Montessori teacher.

B. Teachers at a Montessori preschool program shall maintain a safe Montessori environment for the class.

C. Teachers at a Montessori preschool program shall give the appropriate, individual or group lessons and supervise the ongoing work of the children in accordance with all Montessori pedagogical standards, included herein.

D. Teachers at a Montessori preschool program shall be observant of the needs of the children in the class at all times and, accordingly, shall provide developmentally appropriate materials and class designation regardless of age.

E. Teachers at a Montessori preschool program shall be aware of the family backgrounds and individual needs and development of the children within the Montessori program.

F. Teachers at a Montessori preschool program shall maintain appropriate and confidential communication and records with other school personnel and parents as necessary for the development of the child.

G. Children enrolled in a Montessori class at a Montessori preschool program shall demonstrate to the teacher an adequate level of development indicating a readiness for formal Montessori education.

H. Children enrolled in the Montessori class at a Montessori preschool program shall be toilet trained and demonstrate a level of large and small motor development acceptable to working in a positive manner within the Montessori classroom environment.

I. Children enrolled in the Montessori class at a Montessori preschool program shall demonstrate adequate communication skills and the ability to function with appropriate independence outside the home or away from a day-care provider.

J. Children are initially accepted into a Montessori program at a Montessori preschool on an observational basis, and shall be given adequate, but limited, time to demonstrate individual readiness for the Montessori program.

K. A newly established Montessori class at a Montessori preschool program shall be comprised of no more than 12 to 15 children between the ages of 2 1/2 and six years and shall not increase enrollment to more than 25 children during its first year.

L. As the children and the class develop at a Montessori preschool program, the class structure may gradually build to the recommended Montessori size of 25 to 30 children between the ages of 2 1/2 and six years of age.

M. The class and the children at a Montessori preschool program shall function at all times during the Montessori program according to the Montessori standards as outlined herein.

§ 9.19. Classroom materials.

A. Classrooms at a Montessori preschool program shall contain the necessary and appropriately approved Montessori materials for each age level in the class. These Montessori materials may be complemented by appropriate, teacher-approved materials, but shall not displace or detract from the implementation of the Montessori materials.

B. The children at a Montessori preschool program shall have continuous access to these materials as deemed appropriate by the Montessori teacher.

C. These materials at a Montessori preschool program shall be organized in the classroom and used by the children in work areas that afford safe and ample working space under the direction of the Montessori teacher.

D. Use of Montessori materials in a Montessor.

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preschool program shall be presented by the Montessori teacher in accordance with the Montessori curriculum standards as included herein.

§ 9.20. Curriculum guidelines.

A. Curriculum guidelines, including appropriate materials for children from two years to six years, as stated below shall be followed in a Montessori preschool program.

B. These requirements are based on guidelines used by American Montessori Society, American Montessori Internationale, National Council of Montessori Education, and Saint Nicholas Montessori teacher training.

PRACTICAL LIFE

Preliminary Exercises: Spooning, Pouring rice, Pouring water

Purpose: To teach the child muscular control, care, exactness, how to pour.

Indirect preparation for writing.

Age: 2 1/2 - 3 1/2

Preliminary Exercises: Napkin folding

Purpose: To teach muscular control, exactness.

Indirect preparation for geometry.

Age: 2 1/2 - 4

Care of the Environment: Table washing, Dusting, Polishing wood, Polishing metal, Arranging flowers, Sweeping

Purpose: To teach the child how to care for his environment so that he might adapt to his environment and gain independence.

To teach control of action, acquisition of movement, order and sequence, conscious awareness, development of large and small muscles, left to right movement, increased concentration through repetition.

Preparation for life and future learning.

Age: 2 1/2 - 4 and up

Care of the Person: Dressing frames, Polishing shoes, Washing hands

Purpose: To teach the child to care for himself, to take pride in his person, to gain independence and self-worth.

Age: 2 1/2 - 4 and up

Grace and Courtesy

How to interrupt, listen, make way, pass

How to greet, introduce oneself, offer a chair, take a cookie, serve others, carry scissors, etc.

Purpose: To help the child develop understanding or rules of grace and courtesy, to adapt and be accepted into a social group.

Age: 2 1/2 and up

Movement

How to walk, move around the room, move furniture, stop when hear bell, walk on line, carry a chair, sit properly, carry mats and materials, roll a mat, where to place mat, open and close a door, play silence game, respect silence, etc.

Purpose: To learn control of movement, self awareness of ones self, purposeful activity order, respect for persons and property, attention to details and environment.

Age: 2 1/2 and up

SENSORIAL

Purpose: Aid the child's processes of classification.

Visual Discrimination

Pink tower, Broad stair, Long stair, Solid cylinders, Color tablets, Geometric cabinet, Biology cabinet, Binomial & trinomial cube, Constructive triangles, Superimposed geometric figures, Knobless cylinders, Solid geometric shapes, Mystery bag, Progressive exercises

Purpose: To teach visual discrimination of dimension (length, width, height).

Indirect preparation for number work, algebra and proof of formulas, geometry, art, biology.

Indirect preparation for writing.

Development of vocabulary.

Age: Progressive from 2 1/2 to 4 1/4 +

Auditory discrimination

Sound boxes, Bells, Listening exercises

Purpose: Training of auditory sense, discrimination of sounds, development of listening skills, discrimination of tones.

Age: 2 1/2 and up

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Tactile Sense

Rough and smooth boards, Rough and smooth tablets, Fabrics

Purpose: Development of tactile sense, control of muscular action and lightness touch.

Indirect preparation for writing.

Age: 2 1/2 - 3 1/2

Baric, Thermic, Olfactory Senses

Baric tablet, Thermic bottles, Scent boxes and bottles

Purpose: Further develop senses. Help one to be aware of one's environment.

Age: 2 1/2 and 3 1/2

LANGUAGE

Oral Vocabulary

Enrichment of vocabulary, Language training

Purpose: Through giving the names of objects in the environment, the sensorial materials and their relations, picture card materials, stories, poems, etc. help the child develop a fluent vocabulary so that he might express himself both orally and in written form.

Preparation for reading, writing, self expression, research in cultural areas.

Age: 0 and up

Writing

Sand paper letters sound game, Moveable alphabet, Metal insets, Perfection of writing

Purpose: To make the child aware of the sounds in words and to unite these sounds by muscular and visual memory.

To help him explore and analyze his vocabulary.

To acquire mastery of the hand in wielding a writing instrument.

Age: Progressive 2 1/2 - 4

Reading

Phonetic object game, Phonograms, Puzzle/Secret words

Purpose: To give facility to phonetic reading.

To give the keys to further reading and exploration of

language.

Age: 4 1/2 - 5

Reading Classification

Social cards, cultural cards, Definition booklets, Labels for environment, Etc.

Purpose: To further the child's reading and knowledge by introducing him to the written symbols for words he knows.

To enable him to classify his knowledge.

Age: 4 1/2 on

Function of Words

Article, Adjective, Logical adjective game, Conjunction, Preposition, Verb, Adverb, Commands

Purpose: To make the child aware of the individual function of words in his reading and writing.

To give him further keys to the perfection of reading, writing and self expression.

Age: 4 1/2 - 5

Reading Analysis

Simple sentence (first stage, second stage and extensions, attributes and appositives)

Purpose: To give the child the keys to total reading, full awareness of the intent feeling and style of the writer.

Help the child in his own reading and writing.

Age: 5 1/2 and up

Word Study

Purpose: To allow the child to explore words on a more advanced level.

Punctuation

Purpose: To help the child communicate more effectively in his written work.

Reading & writing of Music

Green boards with notes, Green manuscript board, White music charts, Summary exercises, Learning songs, Musical instruments, etc.

Purpose: To recognize and create the language of musical composition through notation and lyrics.

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Age: 4 1/2 and up

MATHEMATICS

Numbers (1 to 10)

Number rods, Sandpaper numbers, Number rods and cards, Spindle boxes, Cards and counters, Memory game

Purpose: To give the keys to the world of written numbers.

To understand that each number is an entity unto itself.

To teach the quantity, the symbol of sequence of numbers.

To teach the concept of zero.

Preparation for additional math.

Age: 4

Decimal system (Golden Bead Exercises)

Introduction of beads, Introduction of cards, Cards and beads together, Processes of addition, subtraction, multiplication, division

Purpose: To teach the concepts of the decimal system through 1000s.

To give the child the overall picture of the workings of the decimal system and all its processes.

Age: 4 1/2 to 5 1/2 +

Further Exercises in Math

Linear and skip counting, Teen board, Tens board, Stamp game, Dot game, Snake game, Addition strip board, Negative snake game, Negative strip board, Bead bar layouts, Multiplication bead board, Division unit board, Charts, Small bead frame, Hierarchical materials, Large bead frame, Racks and tubes, Fractions

Purpose: To give the child opportunity for further exploration with numbers, the opportunity for repetition and perfection in executing the processes in math.

The opportunity to commit to memory the math facts.

Steps to total abstraction.

Age: 5 - 6 1/2 and up

GEOGRAPHY

Sandpaper globe, Land and water forms, Painted globe, Puzzle maps, Pictures, Definition cards, Stories, Simple reference books

Purpose: To introduce the child, to the concepts of physical political, economic geography, interdependence of man and related language.

Age: 2 1/2 +

HISTORY

Artifacts, Pictures, Definition cards, Simple reference books, Stories

Purpose: To introduce the child to world cultures, physical and spiritual needs of man throughout history, famous persons, holidays, etc.

Age: 2 1/2 +

MUSIC

Songs, Records, tapes, Rhythm and movement, Tone bells, Tone charts, Composers/famous music

Purpose: To give the child a variety of musical experiences, including pitch, tone, rhythm, movement, auditory comparisons, related symbols and language.

Age: 2 1/2 +

CREATIVITY

Appropriate media, Pictures, Stories, Reference books, Practical life, Sensorial lessons

Purpose: To introduce the child to concepts of color, tone, light, form, history and art appreciation; and, afford the child appropriate opportunities for self expression.

Age: 3 +

BOTANY/BIOLOGY

Botany leaf cabinet, Plants, Pictures/plants and animals, Definition cards, Classifications materials, Stories, Simple reference books, Opportunities to explore nature

Purpose: To introduce the child to nature, the vast variety of plants and animals, the characteristics and functions; simple classification of the plant and animal kingdom; interdependence and ecology.

Age: 2 1/2 +

* All work in the areas of science, history, culture, music, and creativity are interrelated and presented to give the child an age appropriate understanding of these areas, factual information, the tools and ability to work with the materials, and the opportunity to share this knowledge.

Important prerequisites are practical life lessons and skills, sensorial and related language lessons and

PART II

CERTIFICATION OF SCHOOL HEALTH EXAMINATION

PART II TO BE COMPLETED BY A PHYSICIAN

(Returns to be completed by parent/guardian)

Student's Name: _____, Birth Date: _____
LAST FIRST MI MO DAY YR

Height: _____; Weight: _____; Head Circumference: _____; BP: _____

Hemoglobin or Hematocrit _____ g/dl; Urine Albumin: _____; Sugar: _____; Other: _____

Most recent Tuberculin Test Date: _____; Results: _____; Hearing R: _____; L: _____

Vision (w/out glasses) R20/ _____; L20/ _____; Hearing test performed? Audiogram: _____; Voice: _____

Vision (with glasses) R20/ _____; L20/ _____; Tympanogram (if indicated): normal _____; abnormal _____

Systems Examination	Exam.	Not Exam.	Comments About Findings
General Appearance, Nutrition			
Posture, Gait			
Skin			
Head			
Eyes External			
Fund			
Ears External & Canal			
Tympanic Membrane			
Nose			
Throat			
Trunk			
Neck			
Heart			
Lungs			
Abdomen			
Genitalia (Tanner Stage)			
Bones, joints, muscles			
Neurological			
Other			
Est. of developmental level			
Behavioral Observations			
Cooperation			
Emotional tone			
Activity level			

Summary of abnormal conditions which may require: (a) educational evaluation, (b) environmental adjustment, or (c) activities to be limited:

Referrals made: _____

Physician (print): _____; Signature: _____; Date: _____

Address: _____; Phone: (____) _____

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PART III

CERTIFICATION OF IMMUNIZATION

Part III is to be Completed by a Physician or Health Department Official

Student's Name: _____ DOB: / /
LAST FIRST MI MO DAY YR

Student's S.S. #: _____ ; I.D. #: _____

Parent/Guardian: _____

IMMUNIZATIONS	RECORD COMPLETE DATES (month,day,year) OF VACCINE DOSES ADMINISTERED				
Diphtheria/Tetanus/Poliovirus (DTP)	/ /	/ /	/ /	/ /	/ /
Diphtheria/Tetanus (DT or Adult Td)	/ /	/ /	/ /	/ /	/ /
Poliovirus (OPV or IPV)	/ /	/ /	/ /	/ /	/ /
Measles (Rubella)	/ /	/ /	Serological Confirmation of Measles Immunity	/ /	/ /
Rubella	/ /	/ /	Serological Confirmation of Rubella Immunity	/ /	/ /
Mumps	/ /	/ /	Child Entered School Before 08/01/81	/ /	/ /
Measles, Mumps, Rubella (MMR)	/ /	/ /			
Repeatably B Vaccine	/ /	/ /		Other	/ /

Haemophilus influenzae Type b (Hib Conjugate): PLEASE COMPLETE THE APPROPRIATE SECTION BELOW.

Has received complete series of Hib vaccine in accordance with current recommendations of the AMERICAN ACADEMY OF PEDIATRICS OR THE U.S. PUBLIC HEALTH SERVICE.

Has received the AGE-APPROPRIATE doses of Hib vaccine as recommended by the AMERICAN ACADEMY OF PEDIATRICS OR THE U.S. PUBLIC HEALTH SERVICE, the series will be completed on (RECORD COMPLETE DATE (month,day,year)):

Series Completion Date: / /
MO DAY YR

Hib vaccine is not indicated because this child has had Hib disease at 24 months of age or older.

Being over 30 months of age, this child is not required by law to have proof of immunization against Hib.

MEDICAL EXEMPTION: DTP / / ; Td / / ; OPV / / ; Hib / / ; Measles / / ; Mumps / / ; Rubella / / .

As specified in 22.1-271.2c(2) of the Code of Virginia, I certify that administration of the vaccine(s) designated above would be detrimental to this student's health. The vaccine(s) is (are) specifically contraindicated because (please specify): _____

This contraindication is permanent / / , or temporary / / and expected to preclude immunization until _____

Signature of PHYSICIAN or HEALTH DEPT. OFFICIAL: _____ Date: / /

RELIGIOUS EXEMPTION: The Code of Virginia allows a child an exemption from receiving immunizations required for school attendance if the student or the student's parent/guardian submits an affidavit to the school's admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. Any student entering school for the first time after July 1, 1993, must submit this affidavit on a **CERTIFICATE OF RELIGIOUS EXEMPTION (Form CRE-1)** which may be obtained at any local health department, school division superintendent's office or local department of Social Services. Ref. Code 22.1-271.2, C(1), CODE OF VIRGINIA

I certify that this student has received at least one dose of each of the vaccines required by the State Board of Health for attending school and that this student has a plan for the completion of his/her requirements within the next 90 days (conditional enrollment).

Signature of Physician or Health Dept. Official: _____ Date (mo,day,yr): / /

I certify that this student is ADEQUATELY IMMUNIZED in accordance with the MINIMUM requirements for attending school prescribed by the State Board of Health on the reverse side of this form.

Signature of Physician or Health Dept. Official: _____ Date (mo,day,yr): / /

ART IV

MINIMUM IMMUNIZATIONS REQUIRED OF NEW STUDENTS BY THE
STATE BOARD OF HEALTH
FOR
*SCHOOL ATTENDANCE

DTP: THREE (3) doses of DTP with one (1) of the three (3) administered after the fourth birthday. If any of these doses must be administered on or after the seventh birthday, ADULT Td should be used instead of DTP.

OPV: THREE (3) doses of trivalent OPV with one of the three administered after the fourth birthday or three (3) doses of eIPV with one of the three administered after the fourth birthday.

MEASLES: TWO (2) doses of live virus measles (rubeola) vaccine, one dose given at 12 months of age or older and a second dose administered prior to entering KINDERGARTEN or first grade, whichever occurs first, effective JULY 1, 1991. Two (2) doses of live measles vaccine shall also be required of students enrolling in grade six (6) in 1992 and thereafter. All other students should have received one (1) dose of live measles vaccine.

RUBELLA: ONE (1) dose of rubella vaccine received at 12 months of age or older.

MUMPS: ONE (1) dose of mumps vaccine received at 12 months of age or older for students entering school on or after AUGUST 1, 1981.

SCHOOL DEFINITION: a) Any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth; b) Any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; c) Any private or parochial nursery school or preschool, or any private or parochial child care center licensed by this Commonwealth; and d) Any preschool handicapped classes or Head Start classes operated by the school divisions within this Commonwealth.

If there are questions please call your local health department.

ART MATERIALS: RECOMMENDATIONS FOR CHILDREN UNDER 12*

DO NOT USE
Dusts and Powders

1. Clay in dry form. Powdered clay which is easily inhaled, contains free silica and possible asbestos. Do not sand dry clay pieces or do other dust-producing activities.

2. Ceramic glazes or copper enamels.

3. Cold water, fiber-reactive dyes or other commercial dyes.

4. Instant paper maches (create inhalable dust and some may contain asbestos fibers, lead from pigments in colored printing inks, etc.).

5. Powdered tempera colors (create inhalable dusts and some tempera colors contain toxic pigments, preservatives, etc.).

6. Pastels, chalks or dry markers that create dust.

Solvents

1. Solvents (e.g., turpentine, shellac, toluene, rubber cement thinner) and solvent-containing materials (solvent-based inks, alkyd paints, rubber cement).

2. Solvent-based silk screen and other printing inks.

3. Aerosol sprays.

4. Epoxy, instant glue, airplane glue or other solvent-based adhesives.

5. Permanent felt tip markers which may contain toluene or other toxic solvents.

SUBSTITUTES

1. Order talc-free, premixed clay (e.g. Amaco white clay). Wet mop or sponge surfaces thoroughly after using clay.

2. Use water-based paints instead of glazes. Artwork may be water-proofed with acrylic based mediums.

3. Use vegetable and plant dyes (e.g. onionskins, tea, flowers) and food dyes.

4. Make paper mache from black and white newspaper and library or white paste, or use approved paper maches.

5. Use liquid paints or paints the teacher pre-mixes.

6. Use crayons, oil pastels or dustless chalks.

1. Use water-based products only.

2. Use water-based silk screen inks, block printing or stencil inks containing safe pigments.

3. Use water-based paints with brushes or sponger techniques.

4. Use white glue, school paste, and preservative-free wheat paste.

5. Use only water-based markers.

Appendix III

INFORMATION FROM HANDBOOK FOR PUBLIC PLAYGROUND SAFETY
U.S. CONSUMER PRODUCT SAFETY COMMISSION

The following information is from the Handbook for Public Playground Safety prepared by the U.S. Consumer Product Safety Commission.

Critical Heights (in feet) for
Various Types and Depths of Resilient Material

Material	6 inch	Uncompressed		Compressed	
		9 inch	12 inch	9 inch	9 inch
Wood Mulch	7 ft	10 ft	11 ft	10 ft	
Double Shredded Bark Mulch	6 ft	10 ft	11 ft	7 ft	
Uniform Wood Chips	6 ft	7 ft	12 ft	6 ft	
Fine Sand	5 ft	5 ft	9 ft	5 ft	
Coarse Sand	5 ft	5 ft	6 ft	4 ft	
Fine Gravel	5 ft	7 ft	10 ft	6 ft	
Medium Gravel	5 ft	5 ft	8 ft	5 ft	

Notes: Critical Height is defined as the maximum height from which an instrumented metal headform, upon impact, yields both a peak deceleration of no more than 200 G's and a HIC of no more than 1,000 when tested in accordance with the procedure described in ASTM F1292. Critical Height, therefore, can be considered as an approximation of the maximum fall height from which a life-threatening head injury would not be expected to occur. The surfacing material used under and around a particular piece of playground equipment should have a Critical Height value of at least the height of the highest accessible part of the equipment.

The table should be read as follows: If, for example, uncompressed wood mulch is used at a minimum depth of six inches, the Critical Height is seven feet. If nine inches of uncompressed wood mulch is used, the Critical Height is 10 feet. It should be noted that, for some materials, the Critical Height decreases when the material is compressed.

There may be other loose-fill materials such as bark nuggets or shredded tires that have shock absorbing properties equivalent to those in the above table. However, no tests have been conducted on these materials by Consumer Product Safety Commission staff. Persons installing rubber mats or similar material should request test data from the manufacturer on the Critical Height of the material.

Toxic Metals

1. Stained glass projects using lead came, solder, flux, etc.
2. Arsenic, cadmium, chrome, mercury, lead, manganese, or other toxic metals which may occur in pigments, metal fillings, metal enamels, ceramic glazes, metal casting, etc.

1. Use colored cellophane and black paper to simulate lead.
2. Do not use these ingredients. Use approved materials only.

Miscellaneous

1. Photographic chemicals.
2. Casting plaster. Creates dust and casting hands and body parts has resulted in serious burns.
3. Acid etches and pickling baths.
4. Scented felt tip markers. These teach children bad habits about eating and sniffing art materials.

1. Use blueprint paper and make sun grams, or use Polaroid cameras.
2. Teacher can mix plaster in a separate ventilated area or outdoors for plaster casting.
3. Should not use techniques employing these chemicals.
4. Use water-based markers.

From Data Sheet -- Art Materials: Recommendations for Children Under 12, Center for Safety in the Arts.

*Section 63.1-195 of the Code of Virginia defines a child as "any natural person under eighteen years of age."

..... Appendix IV

PRESCHOOL ACTIVITIES

The following activities and experiences for preschool children shall include but not be limited to:

1. *Art Activities* – For example: painting and drawing; use of scissors and paper; use of paste, clay, fingerpaints; use of collage materials.
2. *Rhythm and Music* – For example: listening to, dancing to, singing along with records/tapes; use of instruments such as rattles, bells, shakers, sandpaper blocks, triangles, drums, horns; singing and reciting songs, rhymes, finger plays.
3. *Language and Communication Experiences* – For example: book and story reading; story-telling; viewing film strips; listening to recorded stories; group discussion; show and tell; use of flannel boards; interaction with peers and adults.
4. *Sensory Experiences and Exploration of the Environment* – For example: discussion and observation of plants, leaves, weather; observation of and caring for animal and marine life; water play; nature walks; use of toys that stimulate the sense of touch, sight, taste, hearing, and smell; use and observation of wood, soil, sand; field trips into the community; visitors to the classroom.
5. *Construction* – For example: building with blocks, interlocking logs, wooden dowels, wheels with multiple holes; play with nesting and stacking toys, pyramid rings/squares; woodworking.
6. *Social Living* – For example: play with child-size household items; imaginative play through the use of dress-up clothes; play with dolls and doll houses, block people, wooden zoo and farm animals; use of puppets and play store items.
7. *Water and Sand Play* – For example: play with water, sawdust, rice, beans, pebbles, soil; use of pails and shovels, measuring cups and spoons, funnels, pouring devices; availability of hose for siphoning; sponges.
8. *Fine Motor Activities* – For example: use of puzzles, manipulatives, beads, peg boards, mosaics, parquetry boards, spools; play with small balls, lacing boards, sorting toys; building with dominoes; modeling with clay; use of an abacus; use of interlocking blocks, cubes, geometric shapes, rings.
9. *Gross Motor Activities* – For example: climbing; balancing on steps, balance board; playing hopscotch; jumping rope; riding on or rolling transportation toys; throwing bean bags, rubber and nontoxic balls; play with punching bags; digging; reaching.

Note: Many activities provide the opportunity to combine several of the interest areas above. For example, a center may make a collage of fall leaves combining 1 and 4. Many of the manipulative and fine motor activities could be the same, etc.

..... Appendix V

TODDLER ACTIVITIES

The following activities and experiences for toddlers shall include but not be limited to:

1. *Art Activities* – For example: painting and drawing; use of large crayons, paint brushes and paper; use of paste, play dough; fingerpaints; use of collage materials.
2. *Rhythm and Music* – For example: listening to, dancing to, singing along with records/tapes; use of instruments such as rattles, bells, shakers, sandpaper blocks, triangles, drums, horns; singing and reciting simple songs, rhymes, finger plays.
3. *Language and Communication Experiences* – For example: book and story reading; story-telling; listening to recorded stories; use of flannel boards; use of pictures such as children, families, or familiar objects.
4. *Sensory Experiences and Exploration of the Environment* – For example: observation of and caring for animal and marine life; nature walks; use of toys that stimulate the sense of touch, sight, taste, hearing, and smell such as small jars, sound shakers, feely boards; use and observation of wood, soil, sand.
5. *Construction* – For example: building with small unit blocks, lightweight blocks, large interlocking blocks.
6. *Social Living* – For example: use of dolls and play animals; play with dress up clothes, child size household items, puppets, mirrors, phones; play with block people, wooden zoo and farm animals.
7. *Water and Sand Play* – For example: play with water, sand, and other nonfood material with equipment for scooping and digging such as pails, shovels, cups, spoons, and funnels; availability of hose for siphoning; sponges.
8. *Fine Motor Activities* – For example: use of large peg boards, balls, stacking toys, shape sorter, stacking cubes, nesting/stacking toys, huge pegboards, simple puzzles.
9. *Gross Motor Activities* – For example: climbing, pushing and pulling toys; play on low climbing structures; play with simple riding toys, wagons, balls, bean bags.

Proposed Regulations

Note: Many activities provide the opportunity to combine several of the interest areas above. For example, a center may make a collage of fall leaves combining 1 and 4. Many of the manipulative and fine motor activities could be the same, etc.

V.A.R. Doc. No. R94-543; Filed February 2, 1994, 10:52 a.m.

Appendix VI

COMMUNICABLE DISEASE REFERENCE CHART FOR SCHOOL PERSONNEL

DISEASE	INCUBATION PERIOD	COMMON SIGNS AND SYMPTOMS	RECOMMENDATIONS
Choleraeum (Vibriosis)	From 2 to 3 weeks, usually 12 to 17 days.	Sudden onset with slight fever and watery stools which become mucous (small bits) within a few hours. Lesions commonly occur in successive crops, with several stages of maturity present at the same time.	Communicable for as long as 3 days before cessation of vomiting and for not more than 5 days after the appearance of the first crop of vesicles. CASE: Exclude from school for at least 4 days after cessation first appears or until vesicles become dry. Avoid exposure to women in early pregnancy who have not had chickenpox. CONTACTS: On appearance of first sign or symptoms, exclude from school for 3 days.
Cryptosporidiosis	From 2 to 14 days.	Watery diarrhea and low grade fever.	CASE: Exclude until cessation of diarrhea. CONTACTS: School exclusion not indicated.
FINA Dimer (Erythema infectiosum)	From 4 to 30 days.	Mild illness with low fever. Rash characterized by a vivid reddening of the skin especially of the face which fades and reappears classically, described as a "slapped cheek appearance."	CASE: Exclusion from school not required. CONTACTS: School exclusion not indicated.
German Measles (Rubella)	From 14 to 23 days, usually 16 to 18 days.	Mild symptoms; slight fever, rash of variable character lasting about 3 days; enlarged head and neck lymph glands common. Joint pain may occur especially in older children and adults.	Communicable for 7 days before onset of rash and at least 4 days thereafter. CASE: Exclude from school for 7 days after onset of rash. Avoid exposure to women in early pregnancy. Check immunization records. CONTACTS: Those who are pregnant and not immunized should be urged to seek medical advice.
Giardiasis	From 1 to 4 weeks.	Frequently asymptomatic, but may have diarrhea.	CASE: Exclude until cessation of diarrhea. Exclusion of asymptomatic carriers of giardiasis is not recommended. CONTACTS: School exclusion not indicated.
Hepatitis A (Infectious Hepatitis)	From 15 to 30 days, usually 28 days.	Fever, loss of appetite, nausea, abdominal discomfort and weakness followed by jaundice. Many asymptomatic mild cases without jaundice occur, especially in children.	Communicability greatest from 7 days before to several days after onset of jaundice. CASE: Exclude from school until physician advises return. CONTACTS: School exclusion not indicated.
Human Immunodeficiency Virus Infection	Variable	A broad range of disease manifestations affecting multiple organ systems. Many children remain asymptomatic.	CASE: Follow advice of child's physician under the local health department. CONTACTS: School exclusion not indicated.
Impetigo Contagiosa	Unknown	Multiple skin lesions usually of exposed areas (e.g., elbows, legs and hands), but may involve any area. Lesions may be skin and blisters, and begin on blisters which rapidly mature into brown crusts on a reddened base. Healing from center outward produces circular areas which may resemble ringworm.	CASE: Exclude from school until physician advises return (usually 1 day). CONTACTS: Exclusion from school not indicated. Observe carefully for symptoms.
Measles (Rubeola, Red Measles)	From 8 to 12 days, usually 10 days.	Prodrome characterized by fever followed by reddened eyes, runny nose, and cough. Distinct bloody rash appears on day 3 or 4 and lasts 4 to 7 days.	Communicable from beginning of prodromal period to 4 days after appearance of the rash. CASE: Exclude from school until at least 4 days after appearance of the rash. CONTACTS: Check immunization records. Exclude from school immediately on report of prodrome.
Measles, Hemorrhagic	Unknown, probably 2 to 4 days.	Sudden onset of fever, vomiting, lethargy and stiff neck. Progressive stupor or coma are common.	CASE: Exclude from school until physician advises return. CONTACTS: School exclusion not indicated. Observe carefully for symptoms, especially fever. Presence of any asymptomatic children should be advised to consult with their children's physician concerning prophylactic treatment with ribavirin. Observe problem with local health department.
Meningitis, Meningococcal	From 1 to 10 days, usually 3 to 4 days.	Sudden onset of fever and severe headache. Delirium and coma often appear early, a characteristic (meningitic) rash usually follows. Can be fatal despite prompt diagnosis and treatment.	CASE: Exclude from school during acute illness. (Re-communicable after 24 hours of appropriate drug therapy.) CONTACTS: School exclusion not indicated. Parents of day care contacts should be urged to seek their physician's advice concerning prophylactic treatment with rifampin. Observe problem with local health department.
Mumps (Infectious Parotitis)	From 2 to 3 weeks, usually 18 days.	Fever with swelling and tenderness of one or both parotid glands initial below and in front of the ears. Uncomplicated mild cases without swelling may occur.	Communicable from 4 days before swelling until 9 days after. CASE: Exclude from school for 9 days after the onset of parotid gland swelling. CONTACTS: School exclusion not indicated.
Pododermatitis (Itch)	Under optimum conditions, eggs hatch in 7 days and reach maturity in about 10 days.	Severe itching and scratching, often with secondary infection. Scap and hairy portions of body may be affected. Eggs of head lice (which attach to hairs as well, remain, gray masses).	CASE: Exclude from school until treated by a physician. CONTACTS: Direct inspection of head, body, and clothing recommended. School exclusion not indicated in absence of infestation.
Rotavirus Infections	Usually 1 to 3 days.	Diarrhea, usually preceded by vomiting and low-grade fever. May also be transmitted by cough.	CASE: Exclude from school until cessation of diarrhea. CONTACTS: School exclusion not indicated.
Salmonellosis	From 6 to 72 hours, usually 12 to 36 hours.	Sudden onset of fever, abdominal pain, diarrhea, nausea, and frequent vomiting. Dehydration may occur in younger children.	Stools usually positive for Salmonella for several days to several weeks; a few patients test positive for several months. CASE: Exclude from school until physician advises return. CONTACTS: School exclusion not indicated in absence of symptoms.
Scabies	From 2 to 6 weeks.	Bites as body rained green or brown around finger webs, wrists, axilla, neck, buttocks, under genitalia. Extreme scratching often results in secondary infection.	CASE: Exclude from school until physician advises return. CONTACTS: Direct inspection of body. School exclusion not indicated in absence of infestation.
Scarlet Fever	Usually 2 to 3 days, rarely longer.	Fever, sore throat, sandules tonsillitis or pharyngitis. Rash appears most often on neck, chest, and skin folds of arms, elbows, groin and lower aspect of thighs.	CASE: Exclude from school during acute illness. Non-communicable after 24 hours of appropriate drug therapy. CONTACTS: Exclude from school on appearance of signs or symptoms. Contact of school contacts and treatment of carriers not usually indicated.
Shigellosis (Bacterial Dysentery)	From 1 to 7 days, usually 3 days.	Diarrhea, fever and often vomiting and cramps. In severe cases the stools may contain blood.	CASE: Exclude from school until cessation of diarrhea. CONTACTS: School exclusion not indicated. Stool specimens (indicated only) to inspect school sanitation.
Tick Borne (Bite of the Body)	From 4 to 10 days.	Clear or well-developed lesion that can involve face, trunk or limbs. Pruritic to common.	CASE: Exclusion from school and institution as long as lesions are covered or child is being treated by a physician. CONTACTS: School exclusion not indicated.
Whooping Cough (Pertussis)	Usually 7 days, almost uniformly within 10 days, and rarely extending 14 days.	Characteristic begins with upper respiratory symptoms and increasingly irritating cough. The paroxysmal stage usually follows within 1 to 2 weeks, and lasts 1 to 3 months. Paroxysmal stage is characterized by repeated episodes of violent cough breaks by a high-pitched inspiratory whoop. Older children may not have whoop. Complications may require medical work.	CASE: Exclude from school until a physician advises return (usually 3 days after initiation of appropriate therapy). CONTACTS: Check immunization records. Exclude on first sign or symptoms.

NOTE: A more complete list of these conditions and other communicable diseases may be found in *Control of Communicable Diseases in the United States* published by the American Public Health Association. Additional information and regulations are available through your local health department. VIRGINIA DEPARTMENT OF HEALTH OFFICE OF EPIDEMIOLOGY, P.O. BOX 1046, RICHMOND, VIRGINIA 23216.

Appendix VII

MEDICATION AUTHORIZATION

I certify that, in my opinion, it is medically necessary that the medication described below be administered to _____ during center hours and that this medication may be administered by center staff.

Prescription: Medication: _____

Dosage and Time: _____

Duration: _____

Date of Prescription: _____

(Signature of Physician)

(Date)

the parent or guardian of

_____ request that center staff administer the medication prescribed above to my child during center hours. I understand that the person who will administer the medication may be inexperienced. I also agree to furnish said medication in the container supplied by the drug store with the label intact.

(Signature of parent or guardian)

(Date)

Appendix VIII

CHILD CARE FOOD PROGRAM MEAL PATTERNS

This chart lists the amounts and types of food to be served to children 1 year old and older.

MEAL COMPONENTS	AGES 1 - 2	AGES 3 - 5	AGES 6 - 12
BREAKFAST			
Milk	1/2 cup	3/4 cup	1 cup
Juice or Fruit or Vegetable	1/4 cup	1/2 cup	1/2 cup
Bread or Bread Alternate	1/2 slice	1/2 slice	1 slice
including cereal, cold dry	1/4 cup or	1/3 cup or	3/4 cup or
or cereal, hot cooked	1/3 ounce	1/2 ounce	1 ounce
	1/4 cup	1/4 cup	1/2 cup
SNACK (SUPPLEMENT)			
Select 2 out of 4 components			
Milk	1/2 cup	1/2 cup	1 cup
Juice or Fruit or Vegetable	1/2 cup	1/2 cup	3/4 cup
Meat or Meat Alternate	1/2 ounce	1/2 ounce	1 ounce
Bread or Bread Alternate	1/2 slice	1/2 slice	1 slice
including cereal, cold dry	1/4 cup or	1/3 cup or	3/4 cup or
or cereal, hot cooked	1/3 ounce	1/2 ounce	1 ounce
	1/4 cup	1/4 cup	1/2 cup
LUNCH OR SUPPER			
Milk	1/2 cup	3/4 cup	1 cup
Meat or Poultry or Fish	1 ounce	1 1/2 ounces	2 ounces
or egg	1	1	1
or cheese	1 ounce	1 1/2 ounce	2 ounces
or cooked dry beans or peas	1/4 cup	3/8 cup	1/2 cup
or peanut butter and other "butters"	2 Tbsp.	3 Tbsp.	4 Tbsp.
nuts and seeds	1/2 ounce*	3/4 ounce*	1 ounce*
Vegetable and/or Fruits (2 or more total)	1/4 cup	1/2 cup	3/4 cup
Bread or Bread Alternate	1/2 slice	1/2 slice	1 slice

Milk includes whole milk, lowfat milk, skim milk, cultured buttermilk, or flavored milk made from these types of fluid milk which meet State or local standards.

Bread Alternate may also include an equivalent serving of items such as a roll, biscuit, muffin, cooked enriched or whole-grain rice, macaroni, noodles, or other pasta products.

*Nuts and seeds may be credited towards meeting only 50% of the meat/meat alternate requirement.

PROTOCOLS FOR MICROWAVE HEATING OF REFRIGERATED INFANT FORMULA

Prior to heating:

- * Heat only 4 ounces or more
- * Heat only refrigerated formula
- * Always stand the bottle up
- * Always leave bottle top uncovered to allow heat to escape

Heating instructions (full power)

- * 4 ounce Bottles
Heat for no more than 30 seconds
- * 8 ounce Bottles
Heat for no more than 45 seconds

Serving instructions

- * Always replace nipple assembly, invert 10 times (vigorous shaking is unnecessary)
- * Formula should be cool to the touch; formula warm to the touch may be too hot to serve
- * Always test formula; place several drops on tongue or on top of the hand (not the inside wrist)

Source: Madeleine Sigman-Grant, PhD, et al., Pediatrics, Volume 90, September, 1992.

SOME FOODS WITH VITAMIN A AND VITAMIN C

Vitamin A *Excellent Sources

<u>Vegetables</u>	<u>Fruits</u>	<u>Meats</u>
Asparagus	*Apricots	Liver
*Broccoli	*Cantaloupe	
*Carrots	Cherries, red sour	
Chili Peppers (red)	Papaya	
Kale	Peaches, (not canned)	
*Mixed vegetables	Plums, purple (canned)	
*Peas & carrots	Prunes	
Pumpkin	Pumpkin	
	Watermelon	

Vitamin C

<u>Vegetables</u>	<u>Fruits</u>
Asparagus	Cantaloupe
Broccoli	Grapefruit
Bussels sprouts	Grapefruit juice
Cabbage	Oranges
Caiflower	Orange juice
Chili peppers	Raspberries
Collards	Strawberries
Kale	Tangerines
Okra	
Peppers, sweet	
Portoico, white	
Spinach	
Sweetpotatoes	
Tomatoes	
Tomato juice	
paste or puree	
Turtio greens	
Turnips	

Proposed Regulations

Title of Regulation: VR 270-01-0061. Minimum Standards for the Accreditation of Child Day Programs Serving School Age Children Offered in Public Schools.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Public Hearing Dates: April 5, 1994 - 7 p.m.

Written comments may be submitted until June 7, 1994.

(See Calendar of Events section for additional information)

Basis: Section 22.1-19 of the Code of Virginia requires the Board of Education to promulgate accreditation standards for education and care programs provided by public schools that are not exempt from § 63.1-196.001 A 6 of the Code of Virginia.

Purpose: The purpose of these regulations is to set minimum standards for the approval of child day programs, primarily before- and after-school and summer camps, for school-age children operated by public schools as required by § 22.1-19 of the Code of Virginia as amended by the 1993 General Assembly. The provision requires the Child Day-Care Council to prescribe standards for those centers; however, the law requires the Board of Education to accredit programs operated by local school divisions as a part of its regular school accreditation process provided those programs meet or exceed the requirements prescribed by the Child Day-Care Council.

Substance: These regulations, along with applicable sections of the existing Regulations Governing the Accreditation of Public Schools in Virginia adopted by the board, serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve school-age children, in before- and after-school programs and summer camps, not intended to satisfy compulsory attendance laws. They are identical in content to those regulations adopted by the Child Day-Care Council which became effective November 1, 1993, with the following exceptions where they substantially exceed those requirements: 1) Educational qualifications for staff have been increased; 2) Staff Development: Language has been added to require that staff development activities include planned objectives and an assessment component, and the minimum requirement for annual staff development activities has increased from eight, as required by the Child Day-Care Council, to 16; and 3) The minimum requirement for indoor activity space has been increased to 35 square feet. Regulations adopted by the Child Day-Care Council require 25 square feet.

Issues: The proposed regulations do not mandate these programs; therefore, they affect only those local school divisions desiring to operate such programs for school-age children. In 1992-93, 47 school divisions operated before- and after-school programs. Many of these programs are currently licensed by the Virginia Department of Social

Services and will be grandfathered under the proposed regulations and most are offered under contract with other outside individuals or entities.

Impact: Implementation of the proposed regulations would require no additional costs to local school divisions currently operating programs. A recent survey conducted by the department revealed that the cost to parents for programs operated in public schools in 1992 averaged \$20 per week for a before-school program; \$32 for an after-school program; and \$37 for a before- and after-school programs. Some programs were offered at no cost to parents. The locality's cost, which is estimated to be minimal, was not included in the survey. It is estimated that an additional four staff persons at salary grade 12 (Assistant Specialists) will be required to carry out the monitoring of child day programs and those for school-age children. The minimum cost to meet this requirement is estimated to be \$116,000. These individuals would share responsibility for monitoring programs for preschool-aged children.

All regulated entities will be equally impacted by these proposed regulations if they elect to operate the program.

Summary:

Provisions of the Code of Virginia regarding the licensure of child day programs by the Department of Social Services have been amended to require Board of Education accreditation of day care programs for school-age children run by the public schools (e.g., before- and after-school programs and camps). Specifically, the legislation requires the Board of Education to incorporate into the Regulations Establishing Standards for Accrediting Public Schools in Virginia, regulations which meet or exceed those for licensing day care centers issued by the Child Day-Care Council. Those regulations have been adopted and became effective November 1, 1993. These regulations, upon adoption, will be incorporated into the existing accrediting standards.

The proposed regulations, although somewhat different in a format and terminology from those of the Child Day-Care Council, meet, and in a few instances exceed, those regulations. They are extremely detailed and specific. They govern all aspects of the operation of child day programs including, but not limited to, administration, policy and procedures, recordkeeping, personnel, physical facilities, programs, equipment, playgrounds, provisions for emergency treatment of children in the event of a medical condition or injury, transportation, and nutrition. In addition, the regulations contain separate requirements for Montessori programs offered by local school divisions.

The regulations substantially exceed the council's requirements in these areas:

1. Language has been added to require that programs

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work with the child and the family prior to termination to resolve any problem that may be the basis for termination.

2. Amendments raise minimum educational requirements for staff including the elimination of lesser requirements of an associate degree or lower for some staff.

3. Amendments allow lesser educational qualifications for backup program directors.

4. Language has been added to require that staff development activities include planned objectives and an assessment component.

5. The minimum requirement for annual staff development activities has increased from eight, as required by the Child Day-Care Council, to 16.

6. The minimum requirement for indoor activity space has been increased to 35 square feet. Regulations adopted by the Child Day-Care Council require 25 square feet.

7. CPR is required in addition to first aid training.

There are instances where minor upgrading has occurred or language revised to meet the department's needs. Matters relating to periodic monitoring and issuing of accreditation certificates have been decided via department policy rather than being stated in the regulations since the entire body of accrediting standards and the monitoring process is currently under review.

Further, the regulations authorize the Superintendent of Public Instruction to make exceptions to the requirements for cause. The Superintendent also has been authorized to make recommendations to center operator following an investigation of any complaint received. The LEA will be required to follow the recommendation(s). Finally, the proposed regulations include appendices which provide useful information to center operators regarding activities, medical situations, playground construction and equipment, and nutrition.

Preamble:

The Code of Virginia designates the Department of Social Services as the agency responsible for the regulation of residential and day programs for children including child day centers. Further, the Code requires the Child Day-Care Council to prescribe standards for those centers; however, the law allows the Board of Education to accredit programs operated by local school divisions as a part of its regular school accreditation process provided those programs meet or exceed the requirements prescribed by the Child Day-Care Council.

These regulations, along with applicable sections of the existing Regulations Governing the Accreditation of Public Schools in Virginia adopted by the board, serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve school age children enrolled in such programs which are offered in addition to the regular instructional programs. Exceptions to specific provisions of these regulations may be made by the Superintendent of Public Instruction for cause.

VR 270-01-0061. Minimum Standards for the Accreditation of Child Day Programs Serving School Age Children Offered in Public Schools.

PART I. DEFINITIONS, EXEMPTIONS, PURPOSE, APPLICABILITY.

§ 1.1. Definitions.

Position titles used in these standards are descriptive only and do not preclude the use of other titles in school programs.

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

"Admission" means a written or oral agreement for a child's provisional inclusion in the program.

"Adult" means any individual 18 years of age or older.

"Board" means the Virginia Board of Education.

"Camp" means a child day camp.

"Center" means a child day center program offered by a local school board or division.

"Character and reputation" means findings have established, and knowledgeable and objective people agree, that the individual (i) maintains business, professional, family, and community relationships which are characterized by honesty, fairness, and truthfulness, and (ii) demonstrates a concern for the well-being of others to the extent that the individual is considered suitable to be entrusted with the care, guidance, and protection of children. Relatives by blood or marriage, and people who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Child" means any individual under 18 years of age.

"Child day camp" means a child day center for school age children which operates during the summer for less than four months in a 12-month period and which emphasizes outdoor activities.

"Child day center" means a child day program offered

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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.

Exemptions: (§ 63.1-196.001 of the Code of Virginia):

1. A child day center that has obtained an exemption pursuant to § 63.1-196.3 of the Code of Virginia;

2. A program where, by written policy given to and signed by a parent or guardian, children are free to enter and leave the premises without permission or supervision. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection and well-being of several children with disabilities who are mainstreamed shall not be subject to approval;

3. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period;

4. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed 1 1/2 hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation;

5. A program that operates no more than a total of 20 program days in the course of a calendar year provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week;

6. Instructional programs offered by public and private schools that satisfy compulsory attendance laws or the Individuals with Disabilities Education Act, including, but not limited to, Early Childhood Special Education programs and vocational child care programs and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language;

7. Education and care programs provided by public schools which are not exempt pursuant to subdivision 6 of this section shall be regulated by the State Board of Education using regulations that incorporate, but

may exceed, the regulations for child day centers licensed by the commissioner;

8. Early intervention programs for children eligible under Part H of the Individuals with Disabilities Education Act wherein no child attends for more than a total of six hours per week;

9. Practice or competition in organized competitive sports leagues;

10. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services;

11. Child-minding services which are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving services or participating in activities offered by the establishment;

12. A certified school age or nursery school program operated by a private school which is accredited by a statewide accreditation organization recognized by the State Board of Education which complies with the provisions of § 63.1-196.3:1 of the Code of Virginia. The provisions of this subdivision shall expire on July 1, 1994;

13. Prescribed therapeutic recreation programs provided for children with disabilities in programs that meet the child day center definition shall not be subject to approval under this chapter until the appropriate regulations are promulgated; or

14. By policy, a child day center that is required to be programmatically licensed by another state agency for that service.

"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.

"Contract employee" means an individual who enters into an agreement to provide specialized services for a specified period of time.

"Department" means the Virginia Department of Education.

"Department's representative" means an employee or designee of the Virginia Department of Education, acting

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as the authorized agent of the Superintendent.

"Developmentally appropriate" means a philosophy which applies a knowledge of child development to the curriculum, the environment, adult-child interactions, and staff-parent interactions, and which recognizes the age span of the children within the group, as well as the needs of the individual child.

"Enrollment" means the actual attendance of a child as a member of the center.

"Evening care" means care provided in a center between the hours of 7 p.m. and 1 a.m., inclusively.

"Fall zone" means the area underneath and surrounding equipment that requires a resilient surface. It shall encompass sufficient area to include the child's trajectory in the event of a fall while the equipment is in use.

"Montessori module" means a group of alternative, specific standards in the regulations allowed for all programs meeting the eligibility criteria of a Montessori school age program, as specified in the module.

"Montessori school age programs" are educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori, thus verifying that the school age meets the Montessori standards as outlined in the Montessori module. Only Montessori schools which meet the Montessori criteria as outlined in the Montessori module are eligible to comply with the modified licensing standards contained in that module.

"Overnight care" means care provided in a center between the hours of 1 a.m. and 5 a.m., inclusively.

"Parent" means the biological or adoptive parent or parents or legal guardian or guardians of a child enrolled in or in the process of being admitted to a center.

"Physician" means an individual licensed to practice medicine in any of the 50 states or the District of Columbia.

"Primitive camp" means a camp where places of abode, water supply system, permanent toilet and cooking facilities are not usually provided.

"Programmatic experience in the group care of children" means time spent working directly with children in a group, in a child care situation which is located away from the child's home (e.g., Sunday school, vacation Bible school, scouts, etc.).

"School age" means children from the age of eligibility to attend public school and older, age five or older by September 30.

"Specialty camps" means those centers which have an educational or recreational focus on one subject which may include, but is not limited to, dance, drama, music, sports.

"Sponsor" means an individual, partnership, association, public agency, corporation or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a center subject to approval.

"Staff" means administrative, activity, service, and volunteer personnel who work in the facility.

"Staff positions" are defined as follows:

"Administrator" means a manager or coordinator designated to be in charge of the total operation and management of one or more centers. The administrator may be responsible for supervising the program director or, if appropriately qualified, may concurrently serve as the program director.

"Aide" means the individual designated to be responsible for helping the program leader or child care supervisor in supervising children and in implementing the activities and services for children.

"Program leader" or *"child care supervisor"* means the individual designated to be responsible for the direct supervision of children and for implementation of the activities and services for a group of children.

"Program director" means the primary, on-site director or coordinator designated to be responsible for developing and implementing the activities and services offered to children, including the supervision, orientation, training, and scheduling of staff who work directly with children, whether or not the program director personally performs these functions.

"Volunteers" means persons who come to the center less than once a week and are not counted toward the required number of staff.

"Volunteer personnel" means persons who work at the center once a week or more often or who are counted in the required ratio of staff-to-children.

§ 1.2. Responsibility of the Department of Education.

Chapter 10 (§ 63.1-195 et seq.) of Title 63.1 of the Code of Virginia describes the responsibility of the Department of Education for the regulation of residential and day programs for children, including child day centers.

§ 1.3. Responsibility of the Child Day-Care Council.

Section 63.1-202 of the Code of Virginia requires the Child Day-Care Council to prescribe standards for certain activities, services, and facilities for child day centers.

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§ 1.4. Purpose of the standards.

The purpose of these minimum standards is to protect school age children who are separated from their parents during a part of the day by:

1. Ensuring that the activities, services, and facilities of centers are conducive to the well-being of children, and
2. Reducing risks in the environment.

§ 1.5. Montessori program standards.

The minimum standards in Parts I through VIII and the Montessori module in Part IX of these regulations for Montessori school age programs wanting to meet alternative standards, apply to child day centers serving school age children as defined in § 1.1 of these standards.

§ 1.6 Violations.

The department shall investigate any alleged violation of the provisions of these regulations in accordance with procedures approved by the Superintendent. Centers shall be bound by any recommendations made as a result of the investigation.

PART II. ADMINISTRATION, POLICIES AND PROCEDURES, RECORDS.

§ 2.1. Sponsors.

Each center shall have a clearly identified sponsor which shall be identified by its legal name in accordance with state requirements. Programs offered under the egis of the board shall be sponsored by the local school board.

§ 2.2. Control.

The names and addresses of individuals who hold primary financial control and officers of the sponsor or governing body shall be disclosed fully to the Department of Education. The local school board shall assume primary financial responsibility for programs operated under these regulations.

§ 2.3. Character of sponsors.

The sponsor, represented by the individual proprietor, partners, officers, and managers who has delegated authority to act for a sponsor, shall be of good character and reputation and shall not have been convicted of a felony or a misdemeanor related to abuse, neglect, or exploitation of children or adults.

§ 2.4. Inspection of facilities.

The sponsor shall afford the Superintendent or his agents the right at all reasonable times to inspect

facilities, all of his financial books and records, and to interview his agents, employees, and any child or other person within his custody or control.

§ 2.5. Posting of certificate.

The certificate of accreditation shall be posted in a place conspicuous to the public, near the main entrance of the building or the main office.

§ 2.6. Responsibilities of the school division.

The operational responsibilities of the licensee shall include, but not be limited to, the following:

1. To develop a written statement of the purpose, scope, and philosophy of the services to be provided by the center and written policies under which the center will operate;
2. To ensure that the center's activities, services, and facilities are maintained in compliance with: these minimum standards; the terms of the current license issued by the department; other relevant federal, state, and local laws and regulations including the Americans with Disabilities Act and state law regarding disabilities; and the center's own policies and procedures; and
3. To identify in writing the individuals responsible for the day-to-day operations and implementation of both these regulations and the facility's policies.

§ 2.7. Advertising prohibitions.

No center "shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made...an advertisement of any sort regarding services or anything so offered to the public, which...contains any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading" (§ 63.1-196 of the Code of Virginia).

§ 2.8. Liability insurance required.

The center shall maintain public liability insurance for bodily injury with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate or have equivalent self-insurance which is in compliance with local codes. Evidence of insurance coverage shall be made available to the department's representative upon request unless the center is self-insured.

§ 2.9. Accident or insurance plan required.

A plan of accident or school insurance shall be available to the parent. The center may designate whether the parent's participation in the plan is optional or mandatory.

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§ 2.10. Annual plan for injury prevention required.

The center shall develop an annual plan for injury prevention. This plan shall be based on documentation of injuries and a review of the activities and services.

§ 2.11. Playground safety plan required.

The center shall develop a playground safety plan which shall include:

1. Provision for active supervision by staff;
2. Positioning of staff on the playground to help meet the safety needs of children; and
3. Method of maintaining resilient surface.

§ 2.12. Counting numbers of children.

If children 13 years or older receive supervision in the licensed program, they shall be counted in the number of children receiving care.

§ 2.13. Parental notification required.

Before a child's enrollment, parents shall be provided in writing the following:

1. Operating information:
 - a. The center's purpose, scope, philosophy, and any religious affiliations;
 - b. The hours and days of operation and holidays or other times closed;
 - c. The procedures for admission and registration of children;
 - d. Fees and tuition, including whether participation in the accident or school insurance is mandatory;
 - e. The phone number of the center;
 - f. The program and services provided and the ages of children accepted;
 - g. Organizational chart or other description of established lines of authority for persons responsible for center management within the organization; and
 - h. Reasons and procedures for removal of children from rolls including the amount of notice required for the parent and center before removal from the program.

2. Arrival and departure for children:

- a. Policy governing a parent dropping a child off or picking up a child after closing hours and

procedures if the child is not picked up;

b. Policy for release of children from the center only to responsible persons for whom the center has written authorization;

c. Procedures for protecting children from traffic and other hazards during arrival and departure and when crossing streets; and

d. A policy describing the acceptable level of supervision of children upon arrival to and departure from the center.

3. Program and activities:

a. Procedures and policies about accepting and storing children's personal belongings;

b. Discipline policies including acceptable and unacceptable discipline measures;

c. Food policies;

d. Transportation safety policies and procedures when provided; and

e. Policies and procedures encouraging parental involvement.

4. Health and emergencies:

a. Procedures for storing and giving children's medications;

b. Policy for reporting suspected child abuse; and

c. Procedures for handling emergencies.

§ 2.14. Staff information required.

Before staff are allowed to supervise children, staff shall be provided with the information listed in § 2.13 and the following:

1. Procedures for caring for a child who may arrive after any scheduled start time of the center;

2. Procedures to confirm absence of a child from the center when the child attends more than one care or educational arrangement a day;

3. Procedures for identifying where attending children are at all times including field trips; and

4. Procedures for action in case of lost or missing children, ill or injured children, medical emergencies, and natural disasters, including but not limited to fire, flood, or other severe weather.

§ 2.15. General record keeping.

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A. All children's records and personnel records shall be treated confidentially and shall be made available to the custodial parent upon request.

B. Records, logs, and reports shall be kept. Records may be kept at a central location except as indicated otherwise in these standards.

C. All records, logs, and reports on children and staff required by these standards shall be maintained and made accessible for two years after termination of enrollment or employment unless specified otherwise.

D. All records shall be kept in accordance with the provisions of regulations of the board entitled "Management of the Student's Scholastic Records in the Public School of Virginia" (VR 270-01-0014).

§ 2.16. Children's records.

Each center shall maintain and keep at the center a separate record for each child enrolled which shall contain the following information:

1. Name, nickname (if any), sex, and birth date of the child;
2. Name, home address, and home phone number of each parent who has custody;
3. When applicable, work phone number and place of employment of each parent who has custody;
4. Name and phone number of child's physician;
5. Name, address, and phone number of two designated people to call in an emergency if a parent cannot be reached;
6. Names of persons authorized to pick up the child. Appropriate legal paperwork shall be on file when the custodial parent requests the center not to release the child to the other parent;
7. Allergies and intolerance to food, medication, or any other substances, and actions to take in an emergency situation;
8. Chronic physical problems and pertinent developmental information will be kept in a Category 2 file in accordance with the provisions of § 2.15 D;
9. Health information as required by §§ 2.24 through 2.26 of these regulations except that when a center is located in the same building where a child attends school and the child's record has a statement verifying the school's possession of the health record, the center is not required to maintain duplicates of the school's health record for that child provided the school's records are accessible during the center's hours of operation.

10. Written agreements between the parent and the center as required by §§ 2.21 through 2.23;

11. Name of any additional programs or schools that the child is concurrently attending and the grade or class level; and

12. Enrollment and termination date.

§ 2.17. Staff records.

Staff records shall be kept for paid staff and volunteer personnel which shall include the following:

1. Name, address, verification of age requirement, job title, and date of employment or volunteering;
2. Documentation that two or more references as to character and reputation as well as competency were checked before employment or volunteering. If a reference check is taken over the phone, documentation shall include dates of contact, names of persons contacted, the firms contacted, results, and signature of person making call;
3. Reference checks are not required for:
 - a. Staff hired before April 1, 1986, in centers initially licensed prior to the implementation of these regulations; and
 - b. Staff who began work in previously excepted centers that were initially required to be licensed prior to the implementation of these regulations;
4. A criminal record check as required by the Regulation for Criminal Record Checks for Child Welfare Agencies (VR 615-36-01);
5. Name, address, and telephone number of a person to be notified in an emergency, which shall be kept at the center;
6. Written information to demonstrate that the individual possesses the education, orientation training, staff development, certification, and experience required by the job position;
7. First aid and other certification as required by the responsibilities held by the staff member;
8. Health information as required by §§ 2.27 through 2.29 of these regulations;
9. Information, to be kept at the center, about any health problems which may interfere with fulfilling the job responsibilities; and
10. Date of termination when applicable.

§ 2.18. Activities log to be kept.

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The center shall keep a written log of the following:

1. Children in attendance each day;
2. Medication given to children as required in § 7.4;
3. Children's accidents or injuries as required in § 7.9;
4. Asbestos inspections as required in subdivision C 2 of § 4.2, or as required by other applicable state or federal statutes and regulations; and
5. Emergency evacuation practice drills as required in § 7.7.

§ 2.19. Reports to be maintained.

Reports shall be filed and maintained as follows:

1. The center shall inform the Superintendent within two working days of the circumstances surrounding the following incidences:

- a. Death of a child, and
- b. Missing child when local authorities have been contacted for help.

2. Any suspected incidence of child abuse shall be reported in accordance with § 63.1-248.3 of the Code of Virginia.

§ 2.20. Agreement for medical treatment.

A written agreement between the parent and the center shall be in each child's record at the time of the child's enrollment. The agreement shall be signed by the parent and include:

1. An authorization for emergency medical care should an emergency occur when the parent cannot be located immediately, and
2. A statement that the center will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible.

§ 2.21. Transportation and field trips.

When applicable, written permission from the parent authorizing the child's participation in the center's transportation and field trips shall be in the child's record.

§ 2.22. Parent's written authorization for child to leave center unaccompanied.

If a parent wishes a child to leave the center unaccompanied, written permission from the parent authorizing the child to leave the center shall be secured and the center shall maintain a record of the child

leaving unaccompanied.

§ 2.23. Termination.

When a center decides to terminate the enrollment of a child, the center shall provide the parent the reasons for termination in writing. Prior to termination, reasonable efforts shall be made to work with the child and the family to resolve any problems that would serve as a basis for termination.

§ 2.24. Immunizations for children..

A. Regulations by the State Board of Health for the immunization of school children require documentation of all age appropriate immunizations prescribed in the regulations before each child's enrollment to a center licensed by this Commonwealth. Documentation of immunizations is not required for any child whose (i) parent submits an affidavit to the center, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or (ii) physician or a local health department states on a MCH 213B or MCH 213C Form that one or more of the required immunizations may be detrimental to the child's health.

B. Updated information on immunizations received shall be obtained once between each child's fourth and sixth birthdays.

§ 2.25. Physical examinations for children.

A. Each child shall have a physical examination by or under the direction of a physician before enrollment or within one month after enrollment. For children two years of age through five years of age, the examination shall be completed within 12 months prior to enrollment.

B. Exceptions to these requirements may be made in the following instances:

1. Children transferring from a facility licensed by the Virginia Department of Education, certified by a local department of public welfare or social services, child day programs licensed by the Department of Social Services, registered as a small family day home by the Virginia Department of Social Services or by a contract agency of the Virginia Department of Social Services, or approved by a licensed family day system.

a. If the initial report or a copy of the initial report of immunizations is available to the admitting facility, no additional examination is required.

b. If the initial report or a copy of the initial report is not available, a report of physical examination and immunization is required in accordance with §§ 2.25 and 2.26 of these regulations.

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2. In accordance with subsection D of § 22.1-270 of the Code of Virginia, physical examinations are not required for any child whose parent objects on religious grounds. The parent must submit a signed statement noting that the parent objects on religious grounds and certifying that to the best of the parent's knowledge the child is in good health and free from communicable or contagious disease.

§ 2.26. Form and content of immunizations and physical examination reports for children.

A. The current form required by the Virginia Department of Health shall be used to report immunizations received and the results of the required physical examination. When the current Health Department form has not been used such as, but not limited to, when a child transfers from another state, other documentary proof of the child having received the required examination and immunization shall be accepted. Documentary proof may include, but not be limited to, an International Certificate of Immunization, another state's immunization form, or a physician's letterhead.

B. Each report shall include the date of the physical examination and dates immunizations were received.

C. Each report shall be signed by a physician, his designee, or an official of a local health department.

§ 2.27. Tuberculosis examination for staff.

A. Each staff member, including the licensee, administrator, and volunteer personnel, shall obtain and submit a statement that he is free of tuberculosis in a communicable form in accordance with LEA policy. The statement shall be submitted no later than five working days after employment or volunteering and shall:

1. Be dated within 30 days before or five working days after employment of the individual;

2. Include the types of tests used and the results; and

3. Include the signature of the physician, the physician's designee, or an official of a local health department except that when a staff member terminates work at one licensed facility or public school and begins work at a licensed center with a gap in service of six months or less, the previous statement of tuberculosis screening may be transferred to the licensed center. Centers newly subject to approval do not need to require staff hired prior to the implementation of these regulations to submit a statement of tuberculosis screening.

B. The tuberculosis examination shall be repeated as required by a licensed physician or the local health department.

C. Any staff member who comes in contact with a

known case of tuberculosis or who develops chronic respiratory symptoms shall within one month after exposure or development receive an evaluation in accordance with subsections A and B of this section.

§ 2.28. Requirement for staff and volunteer health examination.

When there is evidence that the safety of children may be jeopardized by the physical health or mental health of a staff member or volunteer, a report of examination of this person by a physician or, if appropriate, a clinical psychologist skilled in the diagnosis and treatment of mental illness shall be obtained in accordance with LEA policy. The request for obtaining an examination may come from the licensee, administrator, or department.

§ 2.29. Examination or test results.

If a staff member's or volunteer's examination or test results indicate that his physical or mental condition may jeopardize the safety of children or prevent his performance of duties, the staff member shall not be allowed contact with children or food served to children. The staff member may return when his condition is cleared to the satisfaction of the physician or clinical psychologist as evidenced by a signed, dated statement from the physician or clinical psychologist.

PART III. PERSONNEL.

§ 3.1. Characteristics of staff.

A. No staff shall have been convicted of a felony or a misdemeanor related to abuse, neglect, or exploitation of children or adults.

B. All staff shall understand and be sensitive to the varying capabilities, interests, needs, and problems of children in care.

C. All staff shall be:

1. Of good character and reputation;

2. Capable of carrying out assigned responsibilities;

3. Willing and able to accept training and supervision;

4. Able to communicate effectively both orally and in writing as applicable to the job responsibility; and

5. Able to understand and apply the minimum standards in this booklet which relate to their respective responsibilities.

D. All staff who work directly with children shall have the ability to:

1. Communicate with emergency personnel and

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understand instructions on a prescription bottle;

2. Communicate effectively and appropriately with the age group to which the staff person is assigned;

3. Communicate effectively with parents;

4. Provide a stimulating and safe environment for the age group to which the staff person is assigned; and

5. Use materials, activities, and experiences to encourage children's growth and development.

§ 3.2. Staff holding multiple positions.

All staff who work in multiple positions within the center shall meet the qualifications for each position; however, personnel titles used in the standards are descriptive only. Centers are not required to use the same titles. The program director may have responsibilities for several centers at one site.

§ 3.3. Administrators.

A. There shall be an administrator designated to be in charge of the total operation of the center. Administrators hired after the effective date of these regulations who perform responsibilities of the program director shall be at least 21 years of age and shall possess an endorsement or a bachelor's degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children.

B. The administrator may perform staff orientation, training or program development functions if the administrator meets these qualifications and a written delegation of responsibility specifies the duties of the program director.

C. Montessori school age programs may meet the alternative requirements in the Montessori module.

§ 3.4. Program director.

A. There shall be a program director designated to be responsible for developing and implementing the activities and services offered to children. There may be one program director for a center offering care to both preschool age and school age children at one site or there may be two directors, according to the age of the children, for a center serving preschool age and school age children. If a program director is responsible for a center with school age children and a center with children of preschool age or younger, the qualifications applicable to both preschool age and school age and younger shall apply.

B. Program directors for centers with school age children shall be at least 21 years of age unless directly supervised by an administrator meeting the qualifications of § 3.3, in which case, the program director shall be at

least 19 years of age. Program directors shall possess an endorsement, bachelors, or associate degree in a child related field from an accredited college or university and six months of age appropriate programmatic experience in the group care of children; or Montessori school age programs may meet the alternative requirements in the Montessori module.

§ 3.5. Back-up for program directors.

A. For centers operating eight hours or more per day, if the program director is regularly present in the facility fewer than four hours per day, there shall be an officially designated person who shall assume the responsibility in the absence of the program director and meet the following qualifications:

1. An endorsement, bachelors, or associate degree in a child related field from an accredited college or university and six months of age appropriate programmatic experience in the group care of children;

2. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which 12 semester hours or 18 quarter hours are in subjects relating to group care of children and one year of age appropriate, programmatic experience in the group care of children; or

3. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university and two years of age appropriate, programmatic experience in the group care of children, of which one year of this experience is in a staff supervisory capacity.

B. In addition, if the program operates multiple shifts for working parents, a program director shall be regularly present for at least four hours of each shift or have a back-up program director who shall assume responsibility in the absence of the director and meet the qualifications of subdivisions 1 through 3 of subsection A.

C. For centers operating eight hours or less per day, if the program director is regularly present in the facility less than 50% of the hours of operation, there shall be an officially designated person who shall assume responsibility in the absence of the program director and meet the qualifications of subdivisions 1 through 3 of subsection A.

D. Montessori school age programs may meet the alternative requirements in the Montessori module.

§ 3.6. Program leaders and child care supervisors.

Program leaders and child care supervisors hired or promoted prior to the implementation of these regulations shall be at least 18 years of age and have a high school diploma or G.E.D. In addition, program leaders and child

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care supervisors who work with school age children shall meet the program director qualifications in § 3.4 or possess one of the following:

1. An endorsement or bachelor's degree in a child related field from an accredited college or university;
2. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which 12 semester hours or 18 quarter hours are in subjects relating to the group care of children and three months of age appropriate, programmatic experience in the group care of children. For the programmatic experience to be considered age appropriate, at least some of the experience shall be with school age children; or
3. One year of age appropriate, programmatic experience in the group care of children.

Montessori school age programs may meet the alternative requirements in the Montessori module.

§ 3.7. Aides.

Aides shall be at least 16 years of age and shall meet the general qualifications, health, orientation training, and staff development requirements for the applicable position.

§ 3.8. Volunteer personnel.

Volunteer personnel shall meet the qualifications for the applicable position.

§ 3.9. Volunteers.

The duties of volunteers shall be clearly defined and in accordance with LEA policies.

§ 3.10. Orientation training.

Before assuming job responsibility, all staff shall receive the following training:

1. Job responsibilities and to whom they report;
2. The policies and procedures listed in §§ 2.13 and 2.14 that relate to the staff member's responsibilities;
3. The center's playground safety plan unless the staff member will have no responsibility for playground activities or equipment;
4. Confidential treatment of personal information about children in care and their families; and
5. The minimum standards which relate to the staff member's responsibilities.

§ 3.11. Staff development.

A. The center shall have a plan for staff development.

B. Staff development activities to meet the requirements of subsection C of this section shall:

1. Be related to children and the function of the center;
2. Consist of some sources outside the center which may include but not be limited to audio and visual tapes, conferences, and workshops;
3. Be from someone with verifiable expertise or experience when conducted as in-service training;
4. Include annually the topics of safety for children, child development and discipline, and playground supervision for staff; and
5. Include planned instructional objectives and an assessment component to measure achievement of the desired outcomes.

C. In addition to first aid, CPR, and orientation training required elsewhere in these regulations, employed staff who work directly with children shall annually attend 16 hours of staff development activities related to school age children.

D. Montessori school age programs may meet the alternative requirements in the Montessori module.

§ 3.12. Health observation of children by staff.

Whenever one or more children under the age of eight are present in a center, there shall be at least one staff member on duty at all times who has obtained instruction in performing the daily health observation of children. This instruction shall be obtained from a physician, registered nurse, or health department medical personnel at a three-year interval.

PART IV. PHYSICAL PLANT.

§ 4.1. Requirements prior to initial approval.

A. Before issuance of initial approval and before use of newly constructed, renovated, remodeled, or altered buildings or sections of buildings, written documentation of the following shall be provided by the applicant to the department:

1. Inspection and approval from the appropriate authority that the buildings meet building codes or that the center has an approved plan of correction; and
2. Inspection and approval from the local health department, or approval of a plan of correction, for meeting requirements for:

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- a. Water supply;
- b. Sewage disposal system; and
- c. Food service, if applicable.

Any building which is currently approved for school occupancy and which houses a public school during the school year shall be considered to have met the requirements of subdivision A 1 of this section when housing a center only serving children 2 1/2 years of age or older.

B. If a building was under construction before 1978, a written statement from a Virginia licensed asbestos inspector and management planner shall be submitted before initial approval in order to comply with § 63.1-198.01 of the Code of Virginia. The statement shall include:

- 1. Verification that the building in which the child day center is located was inspected for asbestos according to the requirements of the Asbestos Hazard Emergency Response Act - 40 CFR Part 763 - Asbestos Containing Materials in Schools;
- 2. The dates of the inspection;
- 3. Whether asbestos was found in the building;
- 4. Signature of the licensed asbestos inspector and management planner, including the Virginia license numbers; and
- 5. If asbestos is found or assumed, the statement shall include:
 - a. The location of any significant asbestos hazard areas;
 - b. Verification of completion of the management plan;
 - c. Response actions recommended by the inspector; and
 - d. Verification that response actions have been completed.

C. If asbestos was found in the building, before an approval is granted, the prospective program operator shall:

- 1. Secure, maintain, and make available to the department upon request a signed, written statement that:
 - a. Details actions to remove all asbestos containing materials and verifies that such actions have been completed; or

b. Assures that the recommendations of the operations and maintenance plan will be followed, appropriate staff will receive the necessary training and documentation of required inspections will be completed.

2. Maintain documentation of removal at the center for review by the department's representative.

3. Send written notification to the parents, department, and other adult occupants of the building about the presence and location of the asbestos containing material as well as the advisement that the asbestos inspection report and operation and maintenance plan are available for review. A copy of this notification shall be submitted to the department.

D. The department may request that the complete asbestos inspection report and operations and maintenance plan be submitted for review.

E. The asbestos requirements of subsections B and C of this section do not apply to child day centers located in a currently operating public school building or a state owned building since the asbestos requirements of these buildings are regulated by other agencies.

F. Prior to initial approval, camps shall make the following documentation available to the department upon request:

- 1. Notification of the closest fire department to the camp location;
- 2. Approval or permit from local building official for installation and operation of any incinerator; and
- 3. Approval from appropriate fire official for any open fire, if applicable.

§ 4.2. Requirements subsequent to initial approval.

A. Every 12 months, written documentation shall be obtained and provided to the department, if requested, of inspection and approval from the appropriate fire prevention official that the center's facility complies with the Statewide Fire Prevention Code. If a center is located in a building currently housing a public school during the school year, the school's fire inspection report may be accepted in lieu of the requirements of this subsection if the inspection was completed within the past 12 months.

B. Subsequent to initial approval, and as required by the local health department, written documentation shall be provided upon request of any additional inspections and approvals, or approvals of a plan of correction, for meeting:

- 1. Water supply;
- 2. Sewage disposal system; and

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3. Food service, if applicable.

C. For those buildings where asbestos containing materials are found or assumed and not removed:

1. The administrator or a designated staff member shall take the required asbestos training as specified in the operations and maintenance plan for the facility;

2. The administrator or a designated staff member who has received the required asbestos training shall conduct visual inspections of all asbestos containing materials according to the schedule recommended in the management plan and document the date and the findings of these inspections; and

3. New parents and new adult occupants of the building shall be provided written notification of the presence and location of asbestos in the building and be advised that the asbestos inspection report and operations and maintenance plan are available for their review. A copy of this written notification shall be maintained at the center for review by the department's representative.

D. For those buildings where asbestos containing materials have been found or assumed and asbestos has been removed, the center shall maintain at the center documentation of that removal for review by the department's representative. Unless all asbestos containing materials have been removed, the operations and maintenance plan shall be followed for any remaining asbestos material.

E. Subsections C and D of this section do not apply to child day centers located in a currently operating public school building or a state owned building since the asbestos requirements of these buildings are regulated by other agencies.

§ 4.3. Areas and equipment.

The facility's areas and equipment, inside and outside, shall be:

1. Maintained in clean and sanitary condition;

2. Maintained in conditions that are safe and free of hazards such as, but not limited to, sharp points or corners, splinters, protruding nails, loose rusty parts, and objects small enough to be swallowed, except that Montessori school age programs may meet the alternative requirements in the Montessori module; and

3. Maintained in operable condition.

§ 4.4. Heating provisions.

A. A heating system shall be provided except for camps

for school age children that only operate from May 15 to October 1. The heating system shall meet the following specifications:

1. It shall be approved by the appropriate building official;

2. Heating shall not be provided by stoves except in camps for school age children;

3. It shall be installed to prevent accessibility of children to the system;

4. It shall have appropriate barriers to prevent children from being burned, shocked, or injured from heating equipment. In addition, proper supervision shall be available to prevent injury; and

5. In case of emergency, portable electric or kerosene heaters may be used if they have been previously inspected and approved by the appropriate building official.

B. In areas used by children, the temperature shall be maintained no lower than 68°F;

§ 4.5. Provisions for cooling in extreme conditions.

Fans or other cooling system shall be used when the temperature of areas used by children exceeds 80°F.

§ 4.6. Drinking water.

Provisions for water shall be as follows:

1. Drinking water fountains or individual disposable cups, or both, shall be provided. Drinking water shall be available and accessible at all times.

2. Where portable water coolers are used, they shall be of easily cleanable construction, maintained in a sanitary condition, kept securely closed, and so designed that water may be withdrawn from the container only by water tap or faucet. Individual disposable cups shall be provided.

3. Water which is transported to camp sites for drinking purposes shall be in enclosed containers.

4. Safe water shall be provided each day.

§ 4.7. Other equipment.

Building equipment shall include, but not be limited to, the following:

1. Outside lighting provided at entrances and exits used by children before sunrise or after sundown;

2. A working, nonpay telephone;

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3. First aid kit or kits; and

4. Provision for locking medication as described in § 7.4 of these regulations.

§ 4.8. Hazardous substances and other harmful agents.

A. No center shall be located where conditions exist that would be hazardous to the health and safety of children.

B. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept away from food preparation and storage areas and in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to the children.

C. Hazardous substances shall be stored in the original container unless this container is of such a large size that its use would be impractical.

D. If hazardous substances are not kept in original containers, the substitute containers shall clearly indicate their contents and shall not resemble food or beverage containers.

E. Cosmetics, medications, or other harmful agents of staff members shall not be stored in areas, purses or pockets that are accessible to children.

F. Hazardous art and craft material, such as those listed in Appendix II, and in other regulations of the board shall not be used with children.

§ 4.9. Other safety precautions.

Any building which is currently approved for school occupancy and which houses a public school during the school year shall be considered to have met the building requirements in this regulation when housing a center only serving school age children.

§ 4.10. Camp locations.

Camps shall be located on ground which has good surface drainage and which is free of natural and man-made hazards such as mine pits, shafts, and quarries. Adequate, approved safeguards or preventive measurements shall be taken when the camp is located on ground which is in or adjacent to swamps, marshes, landfills, abandoned landfills, or breeding places for insects or rodents of public health importance.

§ 4.11. Portable camping equipment for heating and cooking.

A. Portable camping equipment for heating or cooking that is not required to be approved by the building official shall bear the label of a recognized inspection agency except for charcoal and wood burning cooking

equipment.

B. No cooking or heating shall occur in tents.

§ 4.12. Activity space.

A. There shall be 35 square feet of indoor space available to each child where activities are conducted, except that:

1. Centers in operation prior to the implementation of these regulations and those newly subject to approval may have until July 1, 1996, to meet this requirement; and

2. Primitive camps for school age children are not required to meet this requirement if weather prevents outdoor activities by children:

a. Thirty-five square feet of indoor space per child is provided either at the program site or at a predesignated, approved location off site; or

b. The program is canceled during this type of weather.

B. Areas not routinely used for children's activities shall not be calculated as available activity space. Space not calculated shall include, but not be limited to, offices, hallways, restrooms, kitchens, storage rooms or closets, and space occupied by equipment which is not used in or does not contribute to the children's activities.

C. A place away from the children's activity area shall be designated for children who are ill, injured, tired, or emotionally upset.

§ 4.13. Smoking prohibited.

Smoking shall be prohibited inside the center and outside the center in the presence of children, except that smoking may be allowed inside the building if it occurs in a room with a separate air circulation system from the one used for children's areas and the circulation system is vented directly to the outdoors.

§ 4.14. Restrooms.

A. Centers shall have at least two toilets and two sinks.

B. Each restroom provided for children shall:

1. Be within a confined area;

2. Be accessible and within the building used by the children, except that restrooms used by school age children at camps do not have to be located within the building;

3. Have toilets that are all flushable;

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4. Have sinks that are all equipped with running water which does not exceed 120°F; and

5. Be equipped with soap, toilet paper, and disposable towels.

C. For restrooms available to boys, urinals may be substituted for not more than one-half the required number of toilets, provided the center has at least two toilets.

D. An adult size toilet with privacy shall be provided for staff use. Staff toilets may be counted in the number of required toilets for children only if children are allowed unrestricted access to them on a routine basis. Primitive camps are not required to have a toilet facility with privacy for staff.

E. Restrooms shall have at least one standard size toilet and one sink for every 30 school age children. When sharing restrooms with other programs the children in the other programs shall be included in the toilet and sink ratio calculations. Montessori school age programs may meet the alternative requirements in the Montessori module.

F. School age children of the opposite sex shall not use the same restroom at the same time.

G. In any restroom used for school age children which contains more than one toilet, at least one toilet shall be enclosed for privacy.

H. Restrooms used by school age children at primitive camps are not required to have:

1. Sinks, if adequate water, supplies, and equipment for hand washing are available, and

2. Flushable toilets if the number of sanitary privies or portable toilets, constructed and operated in accordance with the applicable law and regulations of the Virginia Department of Health, meets the toilet ratio stated in this section. No privy or outdoor toilet shall be located within 75 feet of other buildings or camp activities.

§ 4.15. Requirements for centers with children who are not toilet trained.

Centers that serve children who are not toilet trained shall provide a diapering area which allows for sight and sound supervision of children in the classroom or is accessible and within the building used by children if the staff-to-children ratios required by § 5.2 are maintained in the classroom while other children are being escorted to toileting locations. The diapering area shall have at least the following:

1. A sink with running water not to exceed 120°F;

2. A nonabsorbent surface for changing diapers;

3. A leakproof storage system for diapers that is not hand operated;

4. A covered receptacle for soiled bed linens;

5. Soap and disposable towels; and

6. Privacy for changing diapers of school age children.

§ 4.16. Grandfather provisions.

Centers in operation prior to the implementation of these regulations and those newly subject to approval may have until July 1, 1996, to meet subsections E through G of § 4.17.

§ 4.17. Outdoor play areas.

A. The outdoor play area shall provide a minimum of 75 square feet of space per child in the area at any one time.

B. Playgrounds shall be located and designed in a way to protect children from hazardous situations.

C. While § 6.7 addresses the variety and amount of materials and equipment available for children, the specific playground equipment the center shall have is not designated. If playground equipment is provided, resilient surfacing that helps absorb the shock if a child falls off the equipment shall be placed under all fixed playground equipment with moving parts or climbing apparatus to create a fall zone free of hazardous obstacles. Fall zones are defined as the area underneath and surrounding equipment that requires a resilient surface. It shall encompass sufficient area to include the child's trajectory in the event of a fall while the equipment is in use. Montessori school age programs may meet the alternative requirements in the Montessori module. For recommendations concerning resilient surfacing, see Appendix III.

D. Ground supports shall be covered with materials which would protect children from injury.

E. Equipment used by children shall:

1. Have no accessible openings between 3 1/2 inches and nine inches;

2. Have closed S-hooks when provided; and

3. Have no protrusions, sharp points, shearing points, or pinch points.

F. All swing seats shall be made of flexible material.

G. Sandboxes with bottoms which prevent drainage shall be covered when not in use.

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PART V. STAFFING AND SUPERVISION.

§ 5.1. General provisions.

A. All aides, volunteer personnel, and volunteers shall be under the individual supervision of a staff member on site who meets the qualifications of a program leader, child care supervisor, or program director.

B. Each person serving in the positions of a program director, back-up program director, program leader or child care supervisor shall not be responsible for the individual supervision of more than two aides at any one time. In a training environment, aides used beyond the required staff-to-children ratio of § 5.2 shall not be included in the above requirement.

C. When with children, contract employees shall be sight supervised by a staff member unless the contract employee meets the personnel, health, and orientation training requirement for the applicable position.

D. All staff assigned responsibility for supervision of children shall ensure their care, protection, and guidance at all times. No child under the age of 14 shall be given supervisory responsibility.

E. During the center's hours of operation, one adult on the premises shall be in charge of the administration of the center. This person shall be either the administrator or an adult appointed by the school division or designated by the administrator.

F. There shall be in each building of the center and on field trips at all times when one or more children are present:

1. At least two staff, one of whom meets the qualifications of a program leader, child care supervisor, or program director; or

2. One staff member who meets the qualifications of a program leader, child care supervisor, or program director and a readily available designated support person with direct means for communication between the two of them.

G. In each grouping of children at least one staff member who meets the qualifications of a program leader, child care supervisor or program director shall be regularly present.

H. Children under 10 years of age shall be within actual sight and sound supervision of staff at all times, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to assure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while

in use by children; and

2. Staff check on a child who has not returned from the restroom after five minutes.

I. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when all of the following are met:

1. Staff can hear or see the children. Video equipment, intercom systems, or other technological device shall not substitute for staff being able to directly see or hear children;

2. Staff are nearby so they can provide immediate intervention if needed;

3. There is a system to assure that staff know where the children are and what they are doing;

4. There is a system to assure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the areas where children are not under sight supervision; and

5. Staff provide sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

J. When the outdoor activity area is not adjacent to the center, there shall be at least two staff on the outdoor activity area whenever one or more children are present.

K. Staff shall greet each child upon arrival at the center and oversee each child's departure from the center.

§ 5.2. Staff-child ratios.

A. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

B. A child volunteer not enrolled in the program shall not be counted as a child in the staff-to-children ratio requirements.

C. When children are regularly in ongoing mixed age groups, the staff-to-children ratio applicable to the youngest child in the group shall apply to the entire group, except that Montessori school age programs may meet the alternative requirements in the Montessori module.

D. The staff-to-children ratio shall be one staff member per 20 school age children except that Montessori preschools may meet the alternate requirements in the Montessori module.

PART VI. PROGRAMS, ACTIVITIES, PARENTAL INVOLVEMENT, EQUIPMENT, BEHAVIOR, GUIDANCE.

Proposed Regulations

§ 6.1. Center schedule.

A. There shall be a predictable sequence to the day but the schedule shall be flexible, based on children's needs.

B. For centers operating more than two hours per day or more than two hours per session per day, outdoor or gymnasium activity shall be provided daily, weather allowing, according to the following:

1. If the center operates between two and five and one half hours per day or per session, there shall be at least 30 minutes of outdoor activity per day or per session.

2. If the center operates more than five and one half hours per day or per session, there shall be at least one hour of outdoor activity per day or per session.

3. Outdoor activity is not required on days when an all day field trip occurs and Montessori school age programs may meet the alternative requirements in the Montessori module for subdivision 2 of this subsection.

C. Staff shall provide opportunities for children to engage in self-chosen tasks and activities and allow children to learn from self-directed problem-solving and experimentation except that the requirements of this section do not apply to specialty camps.

§ 6.2. Developmentally appropriate activities.

A. The daily activities shall be developmentally appropriate and promote the individual child's physical, intellectual, emotional, and social well-being and growth as well as promoting curiosity and exploration.

B. To promote emotional development, each center, with the exception of specialty camps, shall provide for:

1. Opportunities for individual self-expression;
2. Recognition that each child is an individual;
3. Respect for personal privacy; and
4. Respect for each child's cultural, ethnic, and family background, as well as the child's primary language or dialect.

§ 6.3. Promoting social development.

A. To promote social development, the center shall provide:

1. Guidance to children in developing and working out ways of getting along with one another;
2. Staff interaction with children in ways which emphasize and foster attitudes of mutual respect

between adults and children; and

3. Staff behavior which demonstrates respect for all other persons as individuals and appreciation of cultural and ethnic diversity.

B. The center shall provide for the self-direction of the children by:

1. Allowing children opportunities to choose activities according to personal desires and interests and to move freely from one activity to another;

2. Encouraging children to do things independently and to help with daily routines as appropriate to the child's developmental level but to be available to comfort and help when needed; and

3. Supporting children's friendships and providing children opportunities to be involved in decision making about group and individual activities.

C. In all centers except specialty camps, a variety of children's activities shall be provided that allow for group and individual involvement and child and staff initiation.

§ 6.4. Assistance with activities.

For children who cannot move without help, staff shall offer to change the places and position of the child and the selection of toys or objects available to the child at least every 30 minutes or more frequently depending on the individual needs of the child.

§ 6.5. Other activities.

A. The center shall provide a balance of active and quiet activities except for specialty camps.

B. Children of all ages shall be allowed to rest or sleep as needed on cots, mats, or beds, as appropriate.

C. Except for specialty camps and Montessori school age programs which meet the alternative requirements in the Montessori module, daily activities and experiences for school age children shall include, but not be limited to, the following:

1. Large motor activities for at least 25% of the program time;
2. Arts and craft activities;
3. Rhythm, music, and drama;
4. Small motor activities;
5. Special projects and hobbies; and
6. Opportunity to do homework in a suitable area.

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§ 6.6. Parental involvement.

A. The center shall be open for parents to visit and observe their children at any time as stated in § 63.1-210.1 of the Code of Virginia and in accordance with LEA policies.

B. The center shall encourage parental involvement on a volunteer basis in appropriate center activities.

C. Staff shall share information with parents about their child's health, development, behavior, adjustment, and needs.

§ 6.7. Equipment and materials.

A. All furnishings, equipment, and materials shall be of a developmentally appropriate size for the child using it.

B. The amount and variety of materials and equipment available and the arrangement and use of the materials and equipment shall be developmentally appropriate for the children and shall include equipment and materials which:

1. Are in sufficient supply to avoid excessive competition among the children and to avoid long waits for use of the materials and equipment;
2. Provide for a variety of experiences and appeal to the individual interests and abilities of children;
3. Are accessible to children for the activities required by these standards;
4. Allow children to use small and large muscles for imaginative play and creative activities; and
5. Include multicultural materials.

C. Indoor slides and climbing equipment shall not be over bare concrete, hardwood floors, masonry, vinyl, tile surface or similar surface.

D. Storage space for play materials and equipment used by the children shall be accessible to children either independently or with help.

E. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

F. All disposable products shall be used once and discarded.

G. Disposable dishes and utensils shall be sturdy enough to contain food without leakage and to prevent harm and injury to children.

H. Provision shall be made for a place for each child's personal belongings.

§ 6.8. Cots, rest mats and beds.

A. No more than one child at a time shall occupy a cot, rest mat, or bed.

B. Cots, rest mats, and beds shall be marked or identified in some way for use by a specific child.

C. Double decker cots or beds, or other sleeping equipment which is stacked shall not be used.

D. Occupied cots, rest mats, and beds shall be at least 2 1/2 feet from any heat source in use.

E. There shall be at least 15 inches of space between sides and ends of occupied cots, beds, and rest mats, except that 15 inches of space are not required where cots, beds, or rest mats touch the wall or where screens are placed between cots or beds as long as one side is open at all times to allow for passage.

F. If rest mats are used, they shall have comfortable cushioning and be sanitized between each use.

§ 6.9. Linens.

A. Linens for cots, rest mats, or beds shall consist of a top cover and a bottom cover or a one-piece covering which is open on three edges.

B. Linens shall be assigned for individual use.

C. Linens shall be maintained in clean and sanitary condition and shall be washed at least weekly.

D. When pillows are used, they shall be assigned for individual use and covered with pillowcases.

E. Mattresses when used shall be covered with a waterproof material which can be easily sanitized.

§ 6.10. Discipline.

A. Discipline shall be constructive in nature and include techniques such as:

1. Using limits that are fair, consistently applied, and appropriate and understandable for the child's level;
2. Providing children with reasons for limits;
3. Giving positively worded directions;
4. Modeling and redirecting children to acceptable behavior;
5. Helping children to constructively express their feelings and frustrations to resolve conflict; and
6. Arranging equipment, materials, activities, and schedules in a way that promotes desirable behavior.

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B. There shall be no physical punishment or disciplinary action administered to the body such as, but not limited to, spanking; roughly handling a child; forcing a child to assume an uncomfortable position (e.g., standing on one foot, keeping arms raised above or horizontal to the body); restraining to restrict movement through binding or tying; enclosing in a confined space, box, or similar cubicle; or using exercise as punishment.

C. A child shall not be shaken at any time.

D. Staff shall not be verbally abusive which would include, but not be limited to, threats, belittling remarks about any child, his family, his race, his religion, or his cultural background, or other statements that are frightening or humiliating to the child.

E. When disciplining a child, staff shall not:

1. Force, withhold, or substitute food;
2. Force or withhold naps; or
3. Punish a child for toileting accidents.

F. When separation is used as a discipline technique, it shall be brief and appropriate to the child's developmental level and circumstances. The child who is separated from the group shall be in a safe, lighted, well-ventilated place and shall be within hearing and vision of a staff member.

G. No child, for punishment or any other reason, shall ever be confined in any space that the child cannot open, such as but not limited to closets, locked rooms, latched pantries, or containers.

H. Staff shall not give a child authority to punish another child nor shall staff consent to a child punishing another child.

I. Staff shall follow the center's policy on acceptable and unacceptable discipline methods.

§ 6.11. Staff and supervision during swimming and wading activities.

A. The staff-child ratios required by § 5.2 shall be maintained while children are participating in swimming or wading activities. The designated water safety instructor or senior lifesaver shall not be counted in the staff-to-children ratios.

B. If a pool, lake, or other swimming area has a water depth of more than two feet, a water safety instructor or senior life saver holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water. The certification shall be obtained from an organization such as, but not limited to, the American Red Cross, the YMCA, or the Boy Scouts.

C. A minimum of two staff members of the center shall be on duty supervising the children during swimming or wading activities when one or more children are in the water.

§ 6.12. Pools and equipment.

A. When permanent swimming or wading pools are located on the premises of the center, the following shall apply:

1. The manufacturer's specifications for operating the pool shall be followed as well as any local ordinances and any Department of Health requirements for swimming pools;

2. All pools constructed, renovated, or remodeled after April 1, 1986, shall have a statement in writing of their inspection and approval from the local building official when such approval is required;

3. Outdoor swimming pools shall be enclosed by safety fences and gates which shall be kept locked when the pool is not in use;

4. Entrances to swimming pools shall be locked when the pool is not in use; and

5. A whistle or other audible signaling device, a buoy or a lemon line, a reach pole, and a backboard shall be available at the swimming or wading site.

B. If children are allowed to swim in a lake or other place other than a pool, safe swimming areas shall be clearly marked.

C. All piers, floats, and platforms shall be in good repair and where used for diving, the minimum water depth shall be indicated on the deck or planking.

D. If children are allowed to swim at a lake or other body of water larger than a pool, there shall be a rescue boat available at all times which is equipped with a reach pole and a lemon line or buoy.

E. If portable wading pools are used, they shall be emptied of dirty water and filled with clean water for each day's use and more frequently as necessary.

§ 6.13. General emergency provisions for swimming and wading.

A. The center shall have emergency procedures and written safety rules for swimming or wading that are:

1. Posted in the swimming area when the pool is located on the premises of the center;

2. Given to staff involved in swimming or wading activities;

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3. Given to parents of children participating in swimming or wading activities; and

4. Explained to children participating in swimming or wading activities.

B. Staff shall have a system for accounting for all children in the water.

C. Each child's swimming skills shall be determined before the child is allowed in water above the child's shoulder height.

D. Outdoor swimming activities shall occur only during daylight hours unless underwater and deck lighting is provided.

E. Children who are not toilet trained shall not use portable wading pools.

PART VII. SPECIAL CARE PROVISIONS AND EMERGENCIES.

§ 7.1. Special care.

A. If a child arrives at the center with the signs or symptoms listed in subsection C of this section, the child shall not be allowed to attend for that day.

B. Staff with training as required in § 3.12 of these regulations shall observe daily each child under eight years of age for signs and symptoms of illness.

C. Unless otherwise instructed by the child's health care provider, that child shall be excluded if:

1. He has a temperature over 100°F, or
2. He has a communicable disease as delineated in the current Communicable Disease Chart recommendations for the exclusion of sick children.

D. If a child needs to be excluded according to subsection C of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are noticed, and
2. The child shall remain in the designated quiet area until leaving the center.

E. When a child at the center has been exposed to a reportable communicable disease, the parent shall be informed.

F. Children's hands shall be washed with soap and running water before eating meals or snacks, after toileting, and after any contact with body fluids.

G. Staff shall wash their hands with soap or germicidal

cleansing agent and water after helping a child with toileting, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding.

H. When a child's clothing or diaper becomes wet or soiled, it shall be changed immediately.

§ 7.2. Children not toilet trained.

A. The child's soiled area shall be thoroughly cleaned with a disposable wipe during each diapering.

B. Staff shall wash their hands with soap or germicidal cleansing agent and water after each diaper change.

C. Disposable diapers shall be used for children in diapers unless the child's skin reacts adversely to disposable diapers. If cloth diapers are used, there shall be separate step-on diaper pails for the cloth and disposable diapers.

D. Surfaces for changing diapers shall be used only for changing diapers or cleaning children.

E. Diapers shall be changed on a nonabsorbent surface which shall be washed with soap and warm water or a germicidal cleansing agent after each use.

F. Tables used for children's activities or meals shall not be used for changing diapers.

§ 7.3. Prescription and nonprescription medication.

Prescription and nonprescription medication shall be given to a child according to the center's written medication policies and only with written authorization from the parent or in accordance with the division's policy whichever is more exacting.

§ 7.4. Medication policies.

A. The center's medication policies shall address methods for administering medication and shall include:

1. Any general restrictions of the center;
2. Duration of the parent's authorization for medication provided that it shall expire or be renewed after 10 work days. Long-term prescription drug use may be excepted if a form such as the one in Appendix V is completed and on file; and
3. Methods to prevent use of outdated medication.

B. The medication authorization shall be available to staff during the entire time it is effective.

C. All medication shall be labeled with the child's name, the name of the medication, the dosage amount, and the time or times to be given.

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D. All medication shall be in the original container with the prescription label or direction label attached.

E. When needed, medication shall be refrigerated. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

F. All medication, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to children.

G. Centers shall keep a log of medication given children which shall include the following:

1. Child to whom medication was administered;
2. Amount and type of medication administered to the child;
3. The day and time the medication was administered to the child; and
4. Staff member administering the medication.

H. Medication shall be returned to the parent as soon as the medication is no longer being administered.

§ 7.5. First aid provisions.

A. There shall be a person(s) on the premises during the center's hours of operation trained in CPR and first aid and also one person on all field trips who is trained in first aid and CPR. This person(s) shall be available to children and meet one of the following qualifications for first aid training:

1. Has a current first aid and CPR certificate by the American Red Cross;
2. Has a current first aid certificate by the National Safety Council;
3. Has successfully completed, within the past three years, a first aid course equivalent to the curriculum which has been approved by the State Board of Health; or
4. Be a R.N. or L.P.N. with a current license from the Board of Nursing.

B. Camps shall have at least one staff member with first aid training, as mentioned in subdivisions A 1 through 4 of this section, for every 30 children present.

C. Camps shall have at least one staff member on the premises during all hours of the program's operation and also one person on all field trips who is available to children and has a current cardiopulmonary resuscitation

(CPR) certificate. When there are more than 30 children present, there shall be at least one staff person with current CPR training for every 30 children present.

D. Primitive camps shall have a staff member on the premises during the hours of operation who has successfully completed at least first responder training within the past three years.

E. A first aid kit shall be on each floor of each building used by children and on all field trips.

F. The required first aid kit shall include at a minimum, scissors; tweezers; gauze pads; adhesive tape; band-aids, assorted types; an antiseptic cleansing solution; an antibacterial ointment; thermometer; two or more triangular bandages; disposable gloves; and the first aid instructional manual.

G. Each first aid kit shall be stored so that it is not available to children but is easily available to staff.

§ 7.6. Emergency supplies.

The following emergency supplies shall be required:

1. Syrup of ipecac or activated charcoal preparation (to be used only upon the advice of the physician or the Poison Control Center);
2. Chemical cooling agents, zip-lock bags, and sponges readily available for icing down contusions, sprains, and breaks;
3. A working, battery-operated flashlight on each floor of each building of the facility that is used by children; and
4. One working, battery-operated radio in each building of the facility used by children and any camp location without a building.

§ 7.7. Procedures for emergencies.

A. The center shall have an emergency evacuation plan developed in accordance with LEA policies that addresses staff responsibility with respect to:

1. Sounding of fire alarms and notification of local authorities;
2. Evacuation procedures including assembly points, head counts, primary and secondary means of egress, and checking to ensure complete evacuation of the buildings;
3. Fire containment procedures, e.g., closing of fire doors or other barriers; and
4. Other special procedures developed with local authorities.

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B. Emergency evacuation procedures shall be posted in a location conspicuous to staff and children on each floor of each building of the center.

C. The center shall implement these emergency evacuation procedures through monthly practice drills and shall maintain a log of the dates of the monthly drills for one year. For centers offering multiple shifts, the evacuation procedures shall be divided evenly among the various shifts.

D. A generic emergency number such as 911 shall be posted in a conspicuous place near each telephone. If a generic number is not available, the following numbers shall be posted near each phone:

- 1. A physician or hospital;*
- 2. An ambulance or rescue squad service;*
- 3. The local fire department; and*
- 4. The local police department.*

E. The number of a regional poison control center shall be posted in a conspicuous place near each phone.

F. The center shall develop a plan for action in case of a missing or injured child which shall address:

- 1. Immediate notification of emergency services;*
- 2. Stabilization of injured child; and*
- 3. Transportation of injured child if necessary.*

G. If an ambulance service is not readily available within 10 to 15 minutes, other transportation shall be available at all times in case of emergency.

§ 7.8. Parental notification in emergencies.

The center or other appropriate official shall notify the parent immediately if a child is lost, experiences a serious accident, needs emergency medical care, or dies. The center shall notify the parent at the end of the day of any known minor accidents or injuries. Examples of a serious accident might include unconsciousness; broken bones; deep cut requiring stitches; concussion; foreign object lodged in eye, nose, ear, or other body orifice. Examples of a minor accident might include a small scratch, cut or scrape; minor bruise or discoloration of the skin.

§ 7.9. Emergency log required.

The center shall maintain a written log of children's injuries in which entries are made the day of occurrence. The log shall include the following:

- 1. Date and time of injury;*

2. Name of injured child;

3. Type of injury;

4. Circumstances of the injury;

5. Names of staff present during the injury;

6. Treatment; and

7. Method of notifying parents.

§ 7.10. Warning system required in camps.

The camp shall have a warning system. Staff and campers shall be trained in this alarm system.

PART VIII. SPECIAL SERVICES, NUTRITION, TRANSPORTATION.

§ 8.1. Nutrition generally.

A. Centers shall serve appropriate snacks or meals, or both, based on the hours of operation and time of the day. Where the federal and state statutes and regulations exceed these requirements, those shall take precedence.

B. The center shall ensure that children arriving from a half-day, morning kindergarten program who have not yet eaten lunch receive a lunch.

C. There shall be at least 1 1/2 hours between each meal and snack but no more than three hours between meals and snacks.

D. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

E. In environments of 80°F or above, constant attention shall be given to the fluid needs of all children. Children in such environments shall be encouraged to drink fluids.

§ 8.2. Food provided by the center.

When food is provided by the center, the following shall apply:

1. Centers providing care to the same children more than four hours a day shall comply with the nutritional requirements of a recognized authority such as the Child and Adult Care Food Program of the United States Department of Agriculture (USDA) or the meal patterns in Appendix VI.

2. Centers offering both meals and snacks shall serve a variety of nutritious foods and shall serve at least three sources of vitamin A and at least three sources of vitamin C on various days each week. Appendix VII lists sources of vitamin A and vitamin C.

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3. A menu listing all foods to be served for all meals and snacks during the current one-week period shall be:

- a. Dated;
- b. Posted in a location conspicuous to parents or given to parents;
- c. Indicate any substituted food; and
- d. Kept on file for six weeks at the center.

4. Powdered milk shall be not be used except for cooking.

§ 8.3. Food brought from home.

When food is brought from home, the following shall apply:

1. The food shall not be subject to rapid deterioration or spoilage;
2. The center shall give parents the USDA requirements and a list of suggested nonperishable food;
3. The food shall be clearly labeled in a way that identifies the owner;
4. The center shall have extra food or shall have a plan available to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and
5. All unused portions of food shall be discarded and not served again.

§ 8.4. Catered foods.

If a catering service is used, it shall be approved by the local health department.

§ 8.5. Food during cookouts.

A. All food shall be prepared in a clean and sanitary manner.

B. Unused, perishable food shall be discarded and not served again.

§ 8.6. Transportation.

If the center transports children to the site of the center, the center shall assume responsibility for the child between the place where the child boards the vehicle and the center site, while at the center and on any center field trips, and from the time the child leaves the center site until the child is delivered to a designated location or

to a responsible person designated by his parent. Regulations governing pupil transportation adopted by the board may supercede these transportation provisions if more stringent or applicable.

§ 8.7. Vehicle requirements.

Any vehicle used by the center for the transportation of children shall meet the following requirements:

1. The vehicle shall be enclosed and provided with door locks;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits set by the Virginia state statutes; and
4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children.

§ 8.8. Provisions for safety during transportation.

A. The center shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed;
2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;
3. Doors are closed properly and locked;
4. At least one staff member or the driver always remain in the vehicle when children are present;
5. The telephone numbers for obtaining emergency help as stated in § 7.7 of these regulations are in the vehicle and available to staff;
6. The name, address, and phone number of the center and an additional emergency contact number is in the vehicle and available to staff; and
7. A list of the names of the children being transported is kept in the vehicle.

B. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

C. When necessary to cross streets, children shall cross streets at corners or crosswalks or other designated safe crossing point if no corner or crosswalk is available.

D. The staff-to-children ratio of § 5.2 of these regulations shall be followed on all field trips but not necessarily in each vehicle. The staff-to-children ratio may

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not be followed during transportation of children to and from the center. Montessori school age programs may meet the alternative requirements in the Montessori module.

§ 8.9. Field trips.

A. At least one staff member on field trips shall be trained in first aid according to subdivisions A 1 through 4 of § 7.5 of these regulations and shall be instructed on procedures to follow if there is a vehicle break down.

B. A first aid kit with the supplies mentioned in § 7.5 F of these regulations, syrup of ipecac or activated charcoal preparation, and chemical cooling agents, for icing down contusions, sprains, and breaks shall be available to staff on field trips.

C. The center shall make provisions for providing children on field trips with adequate food and water.

D. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

E. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

F. There shall be an established plan of communication between staff at the center site and staff who are away from the center site transporting children or on field trips.

G. The center shall develop and implement procedures to assure that all children return to the facility after a field trip.

H. Staff shall follow the center's transportation safety policy.

I. Parental permission for transportation and field trips shall be secured at least 24 hours before the scheduled activity. If a blanket permission is used instead of a separate written permission, the following shall apply:

1. Parents shall be notified of the field trip; and
2. Parents shall be given the opportunity to withdraw their children from the field trip.

§ 8.10. Animals.

A. Animals that are kept on the premises of the center shall be vaccinated if applicable against diseases which present a hazard to the health of children.

B. Animals which are, or are suspected of being, ill or infested with external lice, fleas and ticks or internal worms shall be removed from contact with children.

C. If a child is bitten by an animal, an attempt shall be

made to confine the animal for observation or laboratory analysis for evidence of rabies. The site of the bite shall be washed with soap and water immediately, and the child's physician or local health department shall be contacted as soon as possible for medical advice. The center shall report the animal bite incident to the local health department.

D. Manure shall be removed from barns, stables and corrals at least once a day and stored and disposed of in a manner to prevent the breeding of flies.

§ 8.11. Resting.

A. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours. Camps, providing evening or overnight care to school age children on an occasional basis, are not required to meet the requirements of this subsection if sleeping bags or cots are used.

B. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children, except that camps, providing evening or overnight care to school age children on an occasional basis, are not required to meet the requirements of this subsection if sleeping bags or cots are used.

C. For overnight care which occurs for a child on a weekly or more frequent basis, beds with mattresses shall be used.

D. In addition to § 6.9 of these regulations, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. For evening and overnight care, separate sleeping areas shall be provided for children of the opposite sex eight years of age or older.

F. If sleeping bags are used, § 6.8 of these regulations shall also apply to the use of sleeping bags.

G. Camps may use bunk beds if children are at least eight years of age.

§ 8.12. Evening and overnight care.

A. In centers providing overnight care, except for primitive camps, an operational tub or shower with heated and cold water shall be provided.

B. When bath towels are used, they shall be assigned for individual use.

C. Activities for children in evening or overnight care shall include, as time allows, age-appropriate activities as described in subsection C of § 6.5 of these regulations.

Quiet activities and experiences shall be available

immediately before bedtime.

D. For children receiving evening and overnight care, the provider shall offer a regularly scheduled evening meal and snack.

PART IX. MONTESSORI MODULE.

§ 9.1. Programs generally.

Montessori school age programs are educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori, thus verifying that the school meets the Montessori standards as outlined in the Montessori module.

§ 9.2. Waivers.

Meeting these Montessori standards shall afford the Montessori school age program a waiver from specific minimum standards that conflict with the Montessori educational philosophy as referenced in the regulations. Only school ages which meet the Montessori criteria as outlined in the module are eligible to comply with the modified licensing standards contained in the Montessori module.

§ 9.3. Additional approval required.

Programs operated by a Montessori school age program which go outside the scope of the regular Montessori school age classes shall comply with the minimum standards for licensed child day centers without the benefit of the Montessori module for the extended care portion of the day. Programs going beyond four hours per day for children ages 2 1/2 through four and beyond 6 1/2 hours per day for children five through six years of age, exclusive of the allowable two hour additional enrichment program once a week, shall comply with the minimum standards for licensed child day centers without the benefit of the Montessori module for the extended care portion of the day. Regular Montessori school age classes within an all day program shall meet the minimum standards for licensed child day centers with the option of meeting the Montessori module to obtain waivers from specified standards that conflict with the Montessori philosophy for the regular day portion of their program only.

§ 9.4. Administrators.

The administrator of a Montessori school age program shall be at least 21 years of age and shall have or meet one of the following:

1. An endorsement or bachelor's degree in a child related field from an accredited college or university

and one year of programmatic experience in the group care of children;

2. An associate degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children;

3. The teacher qualification standards of American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori; or

4. Five years of Montessori programmatic experience if the program director meets one of the qualifications of subdivisions 1 through 3 of this section.

§ 9.5. Program directors and back-up program directors.

The program director and back-up program director at a Montessori school age program shall be at least 21 years of age and shall have or meet one of the following:

1. An endorsement or bachelor's degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children;

2. An associate degree in a child related field from an accredited college or university and one year of programmatic experience in the group care of children;

3. The Montessori teacher qualification standards of American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori; or

4. Five years of Montessori programmatic experience.

§ 9.6. Teachers.

Montessori teachers at a Montessori school age program shall:

1. Be at least 21 years of age, and

2. Hold a teaching diploma recognized by American Montessori Society, American Montessori Internationale, National Council of Montessori Education, or Saint Nicholas Montessori for the level the teacher is teaching.

§ 9.7. Staff development.

A. In addition to first aid and orientation training required elsewhere in these regulations, employed staff who work directly with a single group of children for more than three hours daily at a Montessori school age program shall:

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1. Take advantage of formal and informal opportunities for personal and professional growth, including methodology and specific subject matter, as recognized by Montessori standards for a minimum of eight hours annually; or

2. In the event of a staff member's participation in a credit course or a seminar longer than eight hours, these hours may be prorated over a period of no more than five years at the rate of 12 hours annually.

B. Specialty staff at a Montessori school age program providing enrichment activities to a single group of children less than three hours a week shall take advantage of opportunities for professional growth to remain current in their field of expertise.

§ 9.8. Facilities.

The facilities of a Montessori school age program, inside and outside, shall be maintained in conditions that are safe and free of hazards, protruding points or sharp corners, splinters, protruding nails, and loose rusty parts.

§ 9.9. Materials.

The Montessori materials at a Montessori school age program shall be maintained in an attractive, accessible, and safe manner, so as to afford the children complete and appropriate opportunity to develop individual and group skills according to the Montessori curriculum standard.

§ 9.10. Restrooms.

A Montessori school age program shall have restrooms that are easily accessible with a ratio of one toilet and one sink for every 20 children.

§ 9.11. Outdoor play areas.

A Montessori school age program shall have a safe outdoor play area which allows for exploration of nature and provides a resilient surface in fall zones.

§ 9.12. Grouping of children.

A Montessori school age program shall maintain a balanced multi-age grouping, with a ratio of one staff member for every 15 children.

§ 9.13. Activities.

Teachers at a Montessori school age program shall be, at all times during the Montessori program, responsible for the development and activities of the children in his Montessori class. In the event of the teacher's extended absence, there shall be sufficient substitute staff to comply with a ratio of one staff member for every 12 children.

§ 9.14. Auxiliary personnel.

A Montessori school age program shall have readily accessible, and in close classroom proximity, auxiliary persons sufficient to maintain a 1:10 adult-to-child ratio for 2 1/2 to four year olds or 1:15 for balanced mixed age groupings of 2 1/2 to six year olds, to be available in the event of emergency evacuation.

§ 9.15. Skills development.

A Montessori school age program shall offer outdoor and indoor space affording the children complete opportunity to develop individual and group skills, including large and small motor development.

§ 9.16. Outdoor activity required.

In a Montessori school age program operating between five and 6 1/2 hours per day there shall be at least 1/2 hour of outdoor activity per day.

§ 9.17. Pedagogical guidelines.

A Montessori school age program shall abide by the pedagogy and curriculum guidelines in the Montessori module.

§ 9.18. Transportation.

During transportation of children and on all field trips, the staff-to-children ratio for a multi-age grouping of students in a Montessori school age program shall be no more than one to 20.

§ 9.19. Hours and scope of operation.

A. A Montessori school age program shall operate, at a minimum, nine months a year, five days a week, allowing for holidays, teacher in-service days, and parent-teacher conferences, as deemed necessary by the school age program in accordance with Montessori standards.

B. The hours of operation for a Montessori school age program for children, ages 2 1/2 through four years, shall be at least three hours a day, but not more than four hours a day.

C. The hours of operation for a Montessori school age program for children five through six years of age shall be at least six hours a day but no more than 6 1/2 hours a day.

D. Enrichment programs, compatible with Montessori standards shall be acceptable when operated, in keeping with the Montessori curriculum; physical, emotional, and developmental welfare of the child; and available to the individual child not more than an additional two hours once a week.

E. Any program operated beyond these specified school

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hours and ages of children shall comply with the minimum standards for licensed child day centers without the benefit of the Montessori module for the extended care portion of the day. Regular Montessori school age classes within an all day program shall meet the minimum standards for licensed child day centers with the option of meeting the Montessori module to obtain waivers from specified standards that conflict with the Montessori philosophy for the regular day portion of their program only.

§ 9.20. Montessori class structure and supervision.

A. A class shall be deemed a group of children under the direct and continuous supervision of a fully qualified Montessori teacher.

B. Teachers at a Montessori school age program shall maintain a safe Montessori environment for the class.

C. Teachers at a Montessori school age program shall give the appropriate, individual or group lessons and supervise the ongoing work of the children in accordance with all Montessori pedagogical standards, included herein.

D. Teachers at a Montessori school age program shall be observant of the needs of the children in the class at all times and, accordingly, shall provide developmentally appropriate materials and class designation regardless of age.

E. Teachers at a Montessori school age program shall be aware of the family backgrounds and individual needs and development of the children within the Montessori program.

F. Teachers at a Montessori school age program shall maintain appropriate and confidential communication and records with other school personnel and parents as necessary for the development of the child.

G. Children enrolled in a Montessori class at a Montessori school age program shall demonstrate to the teacher an adequate level of development indicating a readiness for formal Montessori education.

H. Children enrolled in the Montessori class at a Montessori school age program shall be toilet trained and demonstrate a level of large and small motor development acceptable to working in a positive manner within the Montessori classroom environment.

I. Children enrolled in the Montessori class at a Montessori school age program shall demonstrate adequate communication skills and the ability to function with appropriate independence outside the home or away from a day-care provider.

J. Children are initially accepted into a Montessori program at a Montessori school age program on an observational basis, and shall be given adequate, but

limited, time to demonstrate individual readiness for the Montessori program.

K. A newly established Montessori class at a Montessori school age program shall be comprised of no more than 12 to 15 children between the ages of 2 1/2 and six years and shall not increase enrollment to more than 25 children during its first year.

L. As the children and the class develop at a Montessori school age program, the class structure may gradually build to the recommended Montessori size of 25 to 30 children between the ages of 2 1/2 and six years of age.

M. The class and the children at a Montessori school age program shall function at all times during the Montessori program according to the Montessori standards as outlined herein.

§ 9.21. Classroom materials.

A. Classrooms at a Montessori school age program shall contain the necessary and appropriately approved Montessori materials for each age level in the class. These Montessori materials may be complemented by appropriate, teacher-approved materials, but shall not displace or detract from the implementation of the Montessori materials.

B. The children at a Montessori school age program shall have continuous access to these materials as deemed appropriate by the Montessori teacher.

C. These materials at a Montessori school age program shall be organized in the classroom and used by the children in work areas that afford safe and ample working space under the direction of the Montessori teacher.

D. Use of Montessori materials in a Montessori school age program shall be presented by the Montessori teacher in accordance with the Montessori curriculum standards as included herein.

§ 9.22. Curriculum guidelines.

Curriculum guidelines, including appropriate materials for children from two years to six years, as stated below shall be followed in a Montessori school age program.

These requirements are based on guidelines used by American Montessori Society, American Montessori Internationale, National Council of Montessori Education, and Saint Nicholas Montessori teacher training.

PRACTICAL LIFE

Preliminary Exercises: Spooning, Pouring rice, Pouring water

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Purpose: To teach the child muscular control, care, exactness, how to pour.

Indirect preparation for writing.

Age: 2 1/2 - 3 1/2

Preliminary Exercises: Napkin folding

Purpose: To teach muscular control, exactness.

Indirect preparation for geometry.

Age: 2 1/2 - 4

Care of the Environment: Table washing, Dusting, Polishing wood, Polishing metal, Arranging flowers, Sweeping

Purpose: To teach the child how to care for his environment so that he might adapt to his environment and gain independence.

To teach control of action, acquisition of movement, order and sequence, conscious awareness, development of large and small muscles, left to right movement, increased concentration through repetition.

Preparation for life and future learning.

Age: 2 1/2 - 4 and up

Care of the Person: Dressing frames, Polishing shoes, Washing hands

Purpose: To teach the child to care for himself, to take pride in his person, to gain independence and self-worth.

Age: 2 1/2 - 4 and up

Grace and Courtesy

How to interrupt, listen, make way, pass

How to greet, introduce oneself, offer a chair, take a cookie, serve others, carry scissors, etc.

Purpose: To help the child develop understanding or rules of grace and courtesy, to adapt and be accepted into a social group.

Age: 2 1/2 and up

Movement

How to walk, move around the room, move furniture, stop when hear bell, walk on line, carry a chair, sit properly, carry mats & materials, roll a mat, where to place mat, open & close a door, play silence game, respect silence, etc.

Purpose: To learn control of movement, self awareness of ones self, purposeful activity order, respect for persons and property, attention to details and environment.

Age: 2 1/2 and up

SENSORIAL

Purpose: Aid the child's processes of classification.

Visual Discrimination

Pink Tower, Broad Stair, Long Stair, Solid Cylinders, Color tablets, Geometric Cabinet, Biology Cabinet, Binomial & trinomial cube, Constructive triangles, Superimposed geometric figures, Knobless Cylinders, Solid Geometric shapes, Mystery bag, Progressive Exercises

Purpose: To teach visual discrimination of dimension (length, width, height).

Indirect preparation for number work, algebra and proof of formulas, geometry, art, biology.

Indirect preparation for writing.

Development of vocabulary.

Age: Progressive from 2 1/2 to 4 1/4 +

Auditory discrimination

Sound boxes, Bells, Listening exercises

Purpose: Training of auditory sense, discrimination of sounds, development of listening skills, discrimination of tones.

Age: 2 1/2 and up

Tactile Sense

Rough and smooth boards, Rough and smooth tablets, Fabrics

Purpose: Development of tactile sense, control of muscular action and lightness touch.

Indirect preparation for writing.

Age: 2 1/2 - 3 1/2

Baric, Thermic, Olfactory Senses

Baric tablet, Thermic bottles, Scent boxes and bottles

Purpose: Further develop senses. Help one to be aware of one's environment.

Age: 2 1/2 and 3 1/2

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LANGUAGE

Oral Vocabulary

Enrichment of vocabulary, Language training

Purpose: Through giving the names of objects in the environment, the sensorial materials and their relations, picture card materials, stories, poems, etc. help the child develop a fluent vocabulary so that he might express himself both orally and in written form.

Preparation for reading, writing, self expression, research in cultural areas.

Age: 0 and up

Writing

Sand paper letters (sound game), Moveable Alphabet, Metal Insets, Perfection of writing

Purpose: To make the child aware of the sounds in words and to unite these sounds by muscular and visual memory.

To help him explore and analyze his vocabulary.

To acquire mastery of the hand in wielding a writing instrument.

Age: Progressive 2 1/2 - 4

Reading

Phonetic object game, Phonograms, Puzzle/Secret words

Purpose: To give facility to phonetic reading.

To give the keys to further reading and exploration of language.

Age: 4 1/2 - 5

Reading Classification

Social cards, cultural cards, Definition booklets, Labels for environment, Etc.

Purpose: To further the child's reading and knowledge by introducing him to the written symbols for words he knows.

To enable him to classify his knowledge.

Age: 4 1/2 on

Function of Words

Article, Adjective, Logical Adjective game, Conjunction, Preposition, Verb, Adverb, Commands

Purpose: To make the child aware of the individual function of words in his reading and writing.

To give him further keys to the perfection of reading, writing and self expression.

Age: 4 1/2 - 5

Reading Analysis

Simple sentence (first stage, second stage and extensions, attributes and appositives)

Purpose: To give the child the keys to total reading, full awareness of the intent feeling and style of the writer.

Help the child in his own reading and writing.

Age: 5 1/2 and up

Word Study

Purpose: To allow the child to explore words on a more advanced level.

Punctuation

Purpose: To help the child communicate more effectively in his written work.

Reading & writing of Music

Green boards with notes, Green manuscript board, White music charts, Summary exercises, Learning songs, Musical instruments, etc.

Purpose: To recognize and create the language of musical composition through notation and lyrics.

Age: 4 1/2 and up

MATHEMATICS

Numbers (1 to 10)

Number rods, Sandpaper numbers, Number rods and cards, Spindle boxes, Cards and counters, Memory game

Purpose: To give the keys to the world of written numbers.

To understand that each number is an entity unto itself.

To teach the quantity, the symbol of sequence of numbers.

To teach the concept of zero.

Preparation for additional math.

Age: 4

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Decimal system (Golden Bead Exercises)

Introduction of beads, Introduction of cards, Cards and beads together, Processes of Addition, subtraction, multiplication, division

Purpose: To teach the concepts of the decimal system through 1000s.

To give the child the overall picture of the workings of the decimal system and all its processes.

Age: 4 1/2 to 5 1/2 +

Further Exercises in Math

Linear and skip counting, Teen board, Tens board, Stamp game, Dot game, Snake Game, Addition strip board, Negative snake game, Negative strip board, Bead Bar Layouts, Multiplication Bead Board, Division Unit Board, Charts, Small Bead Frame, Hierarchical materials, Large Bead frame, Racks and tubes, Fractions

Purpose: To give the child opportunity for further exploration with numbers, the opportunity for repetition and perfection in executing the processes in math.

The opportunity to commit to memory the math facts.

Steps to total abstraction.

Age: 5 - 6 1/2 and up

GEOGRAPHY

Sandpaper Globe, Land & Water Forms, Painted Globe, Puzzle Maps, Pictures, Definition cards, Stories, Simple reference books

Purpose: To introduce the child, to the concepts of physical political, economic geography, interdependence of man and related language.

Age: 2 1/2 +

HISTORY

Artifacts, Pictures, Definition cards, Simple reference books, Stories

Purpose: To introduce the child to world cultures, physical and spiritual needs of man throughout history, famous persons, holidays, etc.

Age: 2 1/2 +

MUSIC

Songs, Records, tapes, Rhythm and movement, Tone bells, Tone charts, Composers/famous music

Purpose: To give the child a variety of musical experiences, including pitch, tone, rhythm, movement, auditory comparisons, related symbols and language.

Age: 2 1/2 +

CREATIVITY

Appropriate media, Pictures, Stories, Reference books, Practical life, Sensorial lessons

Purpose: To introduce the child to concepts of color, tone, light, form, history and art appreciation; and, afford the child appropriate opportunities for self expression.

Age: 3 +

BOTANY/BIOLOGY

Botany leaf cabinet, Plants, Pictures/plants and animals, Definition cards, Classifications materials, Stories, Simple reference books, Opportunities to explore nature

Purpose: To introduce the child to nature, the vast variety of plants and animals, the characteristics and functions; simple classification of the plant and animal kingdom; interdependence and ecology.

Age: 2 1/2 +

** All work in the areas of science, history, culture, music, and creativity are interrelated and presented to give the child an age appropriate understanding of these areas, factual information, the tools and ability to work with the materials, and the opportunity to share this knowledge.*

Important prerequisites are practical life lessons and skills, sensorial and related language lessons and skills, and an understanding of reality and factual concepts.

V.A.R. Doc. No. R94-544; Filed February 2, 1994, 10:49 a.m.

Appendix I

PART I: COMMONWEALTH OF VIRGINIA
SCHOOL ENTRANCE PHYSICAL EXAMINATION AND IMMUNIZATION CERTIFICATION
HEALTH INFORMATION SECTION: (PART I to be completed by parent or guardian) Please Print or Type! Thank you.

Student's Name: _____		
LAST	FIRST	MI
Complete Date of Birth: / / ; Sex: ; Number of Children in Family: ; State or Country of Birth: _____		
Social Security #: / / ; LD. #: _____		
Parent or Legal Guardian: _____		
Address: _____ City: _____ Zip: / /		
Home Phone: () - - ; Work Phone: () - -		
School's Name: _____ Grade: /		
In case of emergency, notify (other than parent or guardian) Please list Name, address, and Complete Phone Number (area code and number).		
1) _____	Phone: () - -	
2) _____	Phone: () - -	

Birth History (weight, prematurity, any other problems at birth): _____

Allergies to food, medicine, insect bites/stings, or other: _____

Check here if you wish to discuss confidential information with school authorities.

EQUIPMENT USED BY CHILD (please check those that apply)	CHRONIC OR RECURRING CONDITIONS (please check those that apply)
<input type="checkbox"/> Prosthesis (e.g., cane, crutch, limb)	<input type="checkbox"/> Ear Infections
<input type="checkbox"/> Brace	<input type="checkbox"/> Hard of Hearing
<input type="checkbox"/> Hearing Aids	<input type="checkbox"/> Seizures/spells
<input type="checkbox"/> Glasses	<input type="checkbox"/> Kidney Disease
<input type="checkbox"/> Helmet	<input type="checkbox"/> Sickle Cell Anemia (not trait)
<input type="checkbox"/> Wheelchair or Walker	<input type="checkbox"/> Head, spinal cord injury, or disease of central nervous system
<input type="checkbox"/> Special Shoes	<input type="checkbox"/> Eye Diseases
<input type="checkbox"/> Other (Please List!): _____	<input type="checkbox"/> Heart Disease
	<input type="checkbox"/> Asthma
	<input type="checkbox"/> Diabetes
	<input type="checkbox"/> Other (Please List!): _____

Names of medical specialists, dentists, or special clinics caring for child: _____

Prescription/medicines taken regularly (LIST): _____

Operations (dates): _____

Hospitalizations (dates): _____

Other Important Information about your child: _____

****I give my permission for the school nurse/school to contact the examining physician to discuss any information contained on this form.

Signature of Parent/Legal Guardian: _____ ; Date (month, yr): / /

Proposed Regulations

PART II

CERTIFICATION OF SCHOOL HEALTH EXAMINATION

PART II TO BE COMPLETED BY A PHYSICIAN

(Reverse to be completed by parent/guardian)

Student's Name: _____; Birth Date: _____
LAST FIRST MI MO DAY YR

Height: _____; Weight: _____; Head Circumference: _____; BP: _____

Hemoglobin or Hematocrit: _____; Urine Albumin: _____; Sugar: _____; Other: _____

Most recent Tuberculin Test Date: _____; Results: _____; Earing R: _____; L: _____

Vision (w/out glasses) R20: _____; L20: _____; Hearing test performed? Audiogram: _____; Voice: _____

Vision (with glasses) R20: _____; L20: _____; Tympanogram (if indicated): normal: _____; abnormal: _____

Systems Examination	Exam.	Not Exam.	Comments About Findings
General Appearance, Nutrition			
Posture, Gait			
Skin			
Head			
Eyes External			
Fund			
Ears External & Canal			
Tympanic Membranes			
Nose			
Throat			
Teeth			
Neck			
Heart			
Lungs			
Abdomen			
Genitalia (Tanner Stage)			
Bones, joints, muscles			
Neurological			
Other			
Est. of developmental level			
Behavioral Observations			
Cooperation			
Emotional tone			
Activity level			

Summary of abnormal conditions which may require: (a) Educational evaluation, (b) Environmental adjustment, or (c) Activities to be limited: _____

Referrals made: _____

Physician (print): _____; Signature: _____; Date: _____

Address: _____; Phone: (_____) _____

MCI-213C, Rev. 06/92

Proposed Regulations

PART III

CERTIFICATION OF IMMUNIZATION

Part III to be Completed by a Physician or Health Department Official

Student's Name: _____ DOB: / /
LAST FIRST MI MO DAY YE

Student's S.S. #: _____ ; LD #: _____

Parent/Guardian: _____

IMMUNIZATIONS	RECORD COMPLETE DATES (month,day,year) OF VACCINE DOSES ADMINISTERED				
Diphtheria/Tetanus/Polio (DTP)	/ /	/ /	/ /	/ /	/ /
Diphtheria/Tetanus (DT or Adult Td)	/ /	/ /	/ /	/ /	/ /
Polio (OPV or IPV)	/ /	/ /	/ /	/ /	/ /
Measles (Rubella)	/ /	/ /	Serological Confirmation of Measles Immunity		/ /
Rubella	/ /	/ /	Serological Confirmation of Rubella Immunity		/ /
Mumps	/ /	/ /	Child Entered School Before 08/01/81		/ /
Measles, Mumps, Rubella (MMR)	/ /	/ /			
Hepatitis B Vaccine	/ /	/ /	/ /	Other	/ /

Haemophilus influenzae Type b (Hib Conjugate): PLEASE COMPLETE THE APPROPRIATE SECTION BELOW.

Has received complete series of Hib vaccine in accordance with current recommendations of the AMERICAN ACADEMY OF PEDIATRICS OR THE U.S. PUBLIC HEALTH SERVICE.

Has received the AGE-APPROPRIATE doses of Hib vaccine as recommended by the AMERICAN ACADEMY OF PEDIATRICS OR THE U.S. PUBLIC HEALTH SERVICE, the series will be completed on (RECORD COMPLETE DATE (month,day,year)):

Series Completion Date: / /
MO DAY YE

Hib vaccine is not indicated because this child has had Hib disease at 24 months of age or older.

Being over 30 months of age, this child is not required by law to have proof of immunization against Hib.

MEDICAL EXEMPTION: DTP / / ; Td / / ; OPV / / ; Hib / / ; Measles / / ; Mumps / / ; Rubella / / .
 *As specified in 22.1-271.2c(6) of the Code of Virginia, I certify that administration of the vaccine(s) designated above would be detrimental to this student's health. The vaccine(s) is (are) specifically contraindicated because (please specify): _____

This contraindication is permanent / / , or temporary / / and expected to preclude immunization until _____

Signature of PHYSICIAN or HEALTH DEPT. OFFICIAL: _____ Date: / /

RELIGIOUS EXEMPTION: The Code of Virginia allows a child an exemption from receiving immunizations required for school attendance if the student or the student's parent/guardian submits an affidavit to the school's admitting official stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. Any student entering school for the first time after July 1, 1983, must submit this affidavit on a CERTIFICATE OF RELIGIOUS EXEMPTION (Form CRE-1) which may be obtained at any local health department, school division superintendent's office or local department of Social Services. Ref. Code 22.1-271.2 C(1), CODE OF VIRGINIA

I certify that this student has received at least one dose of each of the vaccines required by the State Board of Health for attending school and that this student has a plan for the completion of his/her requirements within the next 90 days (conditional enrollment).

Signature of Physician or Health Dept. Official: _____ ; Date (month,year): / /

I certify that this student is ADEQUATELY IMMUNIZED in accordance with the MINIMUM requirements for attending school prescribed by the State Board of Health on the reverse side of this form.

Signature of Physician or Health Dept. Official: _____ ; Date (month,year): / /

ART IV

MINIMUM IMMUNIZATIONS REQUIRED OF NEW STUDENTS BY THE
STATE BOARD OF HEALTH
FOR
*SCHOOL ATTENDANCE

DTP: THREE (3) doses of DTP with one (1) of the three (3) administered after the fourth birthday. If any of these doses must be administered on or after the seventh birthday, ADULT Td should be used instead of DTP.

OPV: THREE (3) doses of trivalent OPV with one of the three administered after the fourth birthday or three (3) doses of tIPV with one of the three administered after the fourth birthday.

MEASLES: TWO (2) doses of live virus measles (rubeola) vaccine, one dose given at 12 months of age or older and a second dose administered prior to entering KINDERGARTEN or first grade, whichever occurs first, effective JULY 1, 1991. Two (2) doses of live measles vaccine shall also be required of students enrolling in grade six (6) in 1992 and thereafter. All other students should have received one (1) dose of live measles vaccine.

RUBELLA: ONE (1) dose of rubella vaccine received at 12 months of age or older.

MUMPS: ONE (1) dose of mumps vaccine received at 12 months of age or older for students entering school on or after AUGUST 1, 1981.

SCHOOL DEFINITION: a) Any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth; b) Any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12; c) Any private or parochial nursery school or preschool, or any private or parochial child care center licensed by this Commonwealth; and d) Any preschool handicapped classes or Head Start classes operated by the school divisions within this Commonwealth.

If there are questions please call your local health department.

ART MATERIALS: RECOMMENDATIONS FOR CHILDREN UNDER 12*

DO NOT USE FOR

SUBSTITUTES

1. Clay in dry form. Powdered clay, which is easily inhaled, contains free silica and possible asbestos. Do not sand dry clay pieces or do other dust-producing activities.

1. Order talc-free, premixed clay (e.g. Amaco white clay). Wet mop or sponge surfaces thoroughly after using clay.

2. Ceramic glazes or copper enamels.

2. Use water-based paints instead of glazes. Artwork may be water-proofed with acrylic based mediums.

3. Cold water, fiber-reactive dyes or other commercial dyes.

3. Use vegetable and plant dyes (e.g. onionskins, tea, flowers) and food dyes.

4. Instant paper maches (create inhalable dust and some may contain asbestos fibers, lead from pigments in colored printing inks, etc.).

4. Make paper mache from black and white newspaper and library or white paste, or use approved paper maches.

5. Powdered temperacolors (create inhalable dusts and some tempera colors contain toxic pigments, preservatives, etc.).

5. Use liquid paints or paints the teacher pre-mixes.

6. Pastels, chalks or dry markers that create dust.

6. Use crayons, oil pastels or dustless chalks.

Solvents

1. Solvents (e.g., turpentine, shellac, toluene, rubber cement thinner) and solvent-containing materials (solvent-based inks, alkyd paints, rubber cement).

1. Use water-based products only.

2. Solvent-based silk screen and other printing inks.

2. Use water-based silk screen inks, block printing or stencil inks containing safe pigments.

3. Aerosol sprays.

3. Use water-based paints with brushes or spatter techniques.

4. Epoxy, instant glue, airplane glue or other solvent-based adhesives.

4. Use white glue, school paste, and preservative-free wheat paste.

5. Permanent felt tip markers which may contain toluene or other toxic solvents.

5. Use only water-based markers.

INFORMATION FROM HANDBOOK FOR PUBLIC PLAYGROUND SAFETY
U.S. CONSUMER PRODUCT SAFETY COMMISSION

The following information is from the Handbook for Public Playground Safety prepared by the U.S. Consumer Product Safety Commission.

Critical Heights (in feet) for
Various Types and Depths of Resilient Material

Material	Uncompressed		Compressed Depth
	Height	Depth	
Wood Mulch	6 inch	12 inch	9 inch
Double Shredded Bark Mulch	7 ft	11 ft	10 ft
Uniform Wood Chips	6 ft	11 ft	7 ft
Fine Sand	5 ft	>12 ft	6 ft
Coarse Sand	5 ft	9 ft	5 ft
Fine Gravel	5 ft	6 ft	4 ft
Medium Gravel	5 ft	6 ft	5 ft

Notes: Critical Height is defined as the maximum height from which an instrumented metal headform, upon impact, yields both a peak deceleration of no more than 200 G's and a HIC of no more than 1,000 when tested in accordance with the procedure described in ASTM F1282. Critical Height, therefore, can be considered as an approximation of the maximum fall height from which a life-threatening head injury would not be expected to occur. The surfacing material used under and around a particular piece of playground equipment should have a Critical Height value of at least the height of the highest accessible part of the equipment.

The table should be read as follows: If, for example, uncompressed wood mulch is used at a minimum depth of six inches, the Critical Height is seven feet. If nine inches of uncompressed wood mulch is used the Critical Height is 10 feet. It should be noted that, for some materials, the Critical Height decreases when the material is compressed.

There may be other loose-fill materials such as bark nuggets or shredded tires that have shock absorbing properties equivalent to those in the above table. However, no tests have been conducted on these materials by Consumer Product Safety Commission staff. Persons installing rubber mats or similar material should request test data from the manufacturer on the Critical Height of the material.

Toxic Metals

1. Stained glass projects using lead paint, solder, flux, etc.
2. Do not use these ingredients. Use approved materials only.

1. Arsenic, cadmium, chrome, mercury, lead, manganese, or other toxic metals which may occur in pigments, metal fillings, metal enamels, ceramic glazes, metal casting, etc.

Miscellaneous

1. Photographic chemicals.
2. Casting plaster. Creates dust and casting hands and body parts has resulted in serious burns.
3. Acid etches and pickling baths.
4. Seened felt tip markers. These lead children and habits about eating and sniffing art materials.

From Data Sheet - A1 Materials: Recommendations for Children Under 12. Center for Safety in the Arts.

*Section 63.1-195 of the Code of Virginia defines a child as any natural person under eighteen years of age.

Proposed Regulations

COMMUNICABLE DISEASE REFERENCE CHART FOR SCHOOL PERSONNEL

DISEASE	INCUBATION PERIOD	COMMON SIGNS AND SYMPTOMS	RECOMMENDATIONS
Chickenpox (Varicella)	From 2 to 3 weeks, usually 12 to 17 days.	Sudden onset with slight fever and itchy eruptions which become vesicular (small blisters) within a few hours. Lesions commonly occur in successive crops, with several stages of maturity present at the same time.	Communicable for as long as 5 days before eruption of vesicles and for not more than 5 days after the appearance of the first crop of vesicles. CASE: Exclude from school for at least 6 days after eruption first appears or until vesicles become dry. Avoid exposure to women in early pregnancy who have not had chickenpox. CONTACTS: On appearance of first sign or symptoms, exclude from school for 7 days.
Cryptosporidiosis	From 2 to 14 days.	Watery diarrhea and low grade fever	CASE: Exclude until cessation of diarrhea. CONTACTS: School exclusion not indicated.
Flu B Virus (Erythema Infectiosum)	From 4 to 28 days.	Mild illness without fever. Rash characterized by a vivid reddening of the skin especially of the face which fades and reappears classically, described as a "slapped cheek appearance."	CASE: Exclusion from school not required. CONTACTS: School exclusion not indicated.
German Measles (Rubella)	From 14 to 23 days, usually 16 to 18 days.	Mild symptoms slight fever, rash of variable character lasting about 3 days, enlarged head and neck lymph glands common, joint pain may occur especially in older children and adults.	Communicable for 7 days before onset of rash and at least 4 days thereafter. CASE: Exclude from school for 7 days after onset of rash. Avoid exposure to women in early pregnancy. Check immunization records. CONTACTS: Those who are pregnant and not immunized should be urged to seek medical advice.
Giardiasis	From 1 to 4 weeks.	Frequently asymptomatic, but may have diarrhea.	CASE: Exclude until cessation of diarrhea. Exclusion of asymptomatic carriers of giardiasis is not recommended. CONTACTS: School exclusion not indicated.
Hepatitis A (Infectious Hepatitis)	From 15 to 50 days, usually 28 days.	Fever, loss of appetite, nausea, abdominal discomfort and tenderness followed by jaundice. Many asymptomatic mild cases without jaundice occur, especially in children.	Communicability greatest from 7 days before to several days after onset of jaundice. CASE: Exclude from school until physician advises return. Concomitant may be prevented. CONTACTS: School exclusion not indicated.
Human Immunodeficiency Virus Infection	Variable	A broad range of disease manifestations affecting multiple organ systems. Many children remain asymptomatic.	CASE: Follow advice of child's physician under the local health department. CONTACTS: School exclusion not indicated.
Impetigo Contagiosa	Unknown	Multiple skin lesions usually of exposed areas (e.g., elbows, legs and knees), but may involve any area. Lesions vary in size and shape, and begin as blisters which rapidly rupture into brown crusts on a reddened base. Healing from center outward produces circular areas which may resemble ringworms.	CASE: Exclude from school until physician advises return (usually 1 day). CONTACTS: Exclusion from school not indicated. Observe carefully for symptoms.
Measles (Rubeola, Red Measles)	From 6 to 15 days, usually 10 days.	Prodrome characterized by fever followed by reddened eyes, runny nose, and cough. Dusk-yell bluish rash appears on day 3 or 4 and lasts 4 to 7 days.	Communicable from beginning of prodrome period to 4 days after appearance of the rash. CASE: Exclude from school until at least 4 days after appearance of the rash. CONTACTS: Check immunization records. Exclude from school immediately on signs of prodrome.
Measles, Hemorrhagic	Unknown, probably 2 to 4 days.	Sudden onset of fever, vomiting, lethargy and stiff neck. Prognosis unclear or even life threatening.	CASE: Exclude from school until physician advises return. CONTACTS: School exclusion not indicated. Observe carefully for symptoms, especially fever. Parents of day care/school contacts should be advised to check with their children's physician concerning prophylactic treatment with rubeola. Discuss problem with local health department.
Measles, Meningeal	From 1 to 10 days, usually 3 to 4 days.	Sudden onset of fever and intense headache. Delirium and coma often appear early; a characteristic (meningitic) rash usually follows. Can be fatal despite prompt diagnosis and treatment.	CASE: Exclude from school during acute illness. Non-communicable after 24 hours of appropriate drug therapy. CONTACTS: School exclusion not indicated. Parents of day care contacts should be urged to seek their physician's advice concerning prophylactic treatment with rubeola. Discuss problem with local health department.
Mumps (Infectious Parotitis)	From 2 to 3 weeks, usually 18 days.	Fever with swelling and tenderness of one or both parotid glands located below and in front of the ears. Uncomplicated mild cases without swelling may occur.	Communicable from 6 days before swelling until 9 days after. CASE: Exclude from school for 9 days after the onset of parotid gland swelling. CONTACTS: School exclusion not indicated.
Pediculosis (Lice)	Under optimum conditions, eggs hatch in 7 days and reach maturity in about 10 days.	Severe itching and scratching, often with secondary infection. Scaly and hairy portions of body may be affected. Eggs of head lice (nits) attach to hairs as small, round, grey ovals.	CASE: Exclude from school until treated by a physician. CONTACTS: Direct inspection of head, body, and clothing recommended. School exclusion not indicated in absence of infestation.
Rotavirus Infections	Usually 1 to 3 days.	Diarrhea, usually preceded by vomiting and low-grade fever. May also be accompanied by cough.	CASE: Exclude from school until cessation of diarrhea. CONTACTS: School exclusion not indicated.
Splintered toes	From 6 to 72 hours, usually 12 to 24 hours.	Sudden onset of fever, abdominal pain, diarrhea, nausea, and frequent vomiting. Dehydration may occur in younger children.	Stools usually positive for <i>Salmonella</i> for several days to several weeks; a few patients test positive for several months. CASE: Exclude from school until physician advises return. CONTACTS: School exclusion not indicated and avoid contact not indicated in absence of symptoms.
Sore throat	From 2 to 6 weeks.	Begin as itchy redness around or between around finger-nails, which thicken, separate, hollow, and become granular. Excessive scratching often results in secondary infection.	CASE: Exclude from school until physician advises return. CONTACTS: Direct inspection of body. School exclusion not indicated in absence of infestation.
Scarlet Fever	Usually 1 to 3 days, rarely longer.	Fever, sore throat, conjunctivitis and pharyngitis. Rash appears most often on neck, chest, and skin folds of arms, elbows, groin and lower aspect of thighs.	CASE: Exclude from school during acute illness. Non-communicable after 24 hours of appropriate drug therapy. CONTACTS: Exclude from school on appearance of signs or symptoms. Coloring of school contacts and treatment of carriers not usually indicated.
Shigellosis (Bacillary Dysentery)	From 1 to 7 days, usually 3 days.	Diarrhea, fever and often vomiting and cramps. In severe cases the stools may contain blood.	CASE: Exclude from school until cessation of diarrhea. CONTACTS: School exclusion not indicated. Stool cultures indicated only in severe or recurrent outbreaks.
Three Corners (Ringspots of the Body)	From 4 to 10 days.	Circular well-demarcated lesions that can involve face, trunk or limbs. Pruritic in nature.	CASE: Exclusion from school not indicated as long as lesions are covered or child is being treated by a physician. CONTACTS: School exclusion not indicated.
Whooping Cough (Pertussis)	Usually 7 days, almost uniformly within 10 days, and rarely exceeding 14 days.	Catarrhal stage begins with upper respiratory symptoms and increasingly irritating cough. The paroxysmal stage usually follows within 1 to 2 weeks, and lasts 1 to 2 months. Paroxysmal stage is characterized by repeated episodes of violent cough broken by a high-pitched inspiratory whoop. Older children may not have whoop. Convalescence may require several weeks.	CASE: Exclude from school until a physician advises return (usually 3 days after initiation of appropriate therapy). CONTACTS: Check immunization records. Exclude on first sign or symptoms.

NOTE: A more complete discussion of these conditions and other communicable diseases may be found in *Control of Communicable Diseases in Man* (1981) published by the American Public Health Association. Additional information and resources may also be available through your state health department. VIRGINIA DEPARTMENT OF HEALTH OFFICE OF EPIDEMIOLOGY PO BOX 1406 RICHMOND VIRGINIA 23214

Appendix V

MEDICATION AUTHORIZATION

I certify that, in my opinion, it is medically necessary that the medication described below be administered to _____ during center hours and that this medication may be administered by center staff.

Prescription: Medication: _____

Dosage and Time: _____

Duration: _____

Date of Prescription: _____

(Signature of Physician)

(Date)

I, _____, the parent or guardian of _____, request that center staff administer the medication prescribed above to my child during center hours. I understand that the person who will administer the medication may be inexperienced. I also agree to furnish said medication in the container supplied by the drug store with the label intact.

(Signature of parent or guardian)

(Date)

Appendix VI

CHILD CARE FOOD PROGRAM MEAL PATTERNS

This chart lists the amounts and types of food to be served to children 1 year old and older.

MEAL COMPONENTS	AGES 1 - 2	AGES 3 - 5	AGES 6 - 12
BREAKFAST			
Milk	1/2 cup	3/4 cup	1 cup
Juice or Fruit or Vegetable	1/4 cup	1/2 cup	1/2 cup
Bread or Bread Alternate including cereal, cold dry	1/2 slice	1/2 slice	1 slice
or cereal, hot cooked	1/4 cup or 1/3 ounce	1/3 cup or 1/2 ounce	3/4 cup or 1 ounce
	1/4 cup	1/4 cup	1/2 cup
SNACK (SUPPLEMENT)			
Select 2 out of 4 components			
Milk	1/2 cup	1/2 cup	1 cup
Juice or Fruit or Vegetable	1/2 cup	1/2 cup	3/4 cup
Meat or Meat Alternate	1/2 ounce	1/2 ounce	1 ounce
Bread or Bread Alternate including cereal, cold dry	1/2 slice	1/2 slice	1 slice
or cereal, hot cooked	1/4 cup or 1/3 ounce	1/3 cup or 1/2 ounce	3/4 cup or 1 ounce
	1/4 cup	1/4 cup	1/2 cup
LUNCH OR SUPPER			
Milk	1/2 cup	3/4 cup	1 cup
Meat or Poultry or Fish or egg	1 ounce	1 1/2 ounces	2 ounces
or cheese	1	1	1
or cooked dry beans or peas	1 ounce	1 1/2 ounce	2 ounces
or peanut butter and other "bunners"	1/4 cup	3/8 cup	1/2 cup
nuts and seeds	2 Tbsp.	3 Tbsp.	4 Tbsp.
Vegetable and or Fruits (2 or more total)	1/2 ounce*	3/4 ounce*	1 ounce*
Bread or Bread Alternate	1/4 cup	1/2 cup	3/4 cup
	1/2 slice	1/2 slice	1 slice

Milk includes whole milk, lowfat milk, skim milk, cultured buttermilk, or flavored milk made from these types of fluid milk which meet State or local standards.

Bread Alternate may also include an equivalent serving of items such as a roll, biscuit, muffin, cooked enriched or whole-grain rice, macaroni, noodles, or other pasta products.

*Nuts and seeds may be credited towards meeting only 50% of the meat/meat alternate requirement.

Proposed Regulations

Appendix VII

SOME FOODS WITH VITAMIN A AND VITAMIN C

<u>Vitamin A</u>		<u>*Excellent Sources</u>	
<u>Vegetables</u>		<u>Fruits</u>	<u>Meats</u>
<u>Asparagus</u>	<u>Spinach</u>	<u>*Apricots</u>	<u>Liver</u>
<u>*Broccoli</u>	<u>*Squash-winter</u>	<u>*Cantaloupe</u>	
<u>*Carrots</u>	<u>*Sweetpotatoes</u>	<u>Cherries, red sour</u>	
<u>Chili peppers(red)</u>	<u>Tomatoes</u>	<u>Papaya</u>	
<u>Kale</u>	<u>Tomato Juice,</u>	<u>Peaches, (not canned)</u>	
<u>*Mixed vegetables</u>	<u>paste or puree</u>	<u>Plums, purple (canned)</u>	
<u>*Peas & carrots</u>	<u>*Turnip greens</u>	<u>Prunes</u>	
<u>Pumpkin</u>	<u>Vegetable juices</u>	<u>Pumpkin</u>	
		<u>Watermelon</u>	

<u>Vitamin C</u>		
<u>Vegetables</u>		<u>Fruits</u>
<u>Asparagus</u>	<u>Peppers, sweet</u>	<u>Cantaloupe</u>
<u>Broccoli</u>	<u>Potatoes, white</u>	<u>Grapefruit</u>
<u>Brussels sprouts</u>	<u>Spinach</u>	<u>Grapefruit juice</u>
<u>Cabbage</u>	<u>Sweetpotatoes</u>	<u>Oranges</u>
<u>Cauliflower</u>	<u>Tomatoes</u>	<u>Orange juice</u>
<u>Chili peppers</u>	<u>Tomato juice,</u>	<u>Raspberries</u>
<u>Collards</u>	<u>paste or puree</u>	<u>Strawberries</u>
<u>Kale</u>	<u>Turnip greens</u>	<u>Tangerines</u>
<u>Okra</u>	<u>Turnips</u>	

Proposed Regulations

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Title of Regulation: VR 320-01-04. Resident Trainee Program for Funeral Service.

Statutory Authority: §§ 54.1-2400, 54.1-2803 and 54.1-2817 of the Code of Virginia.

The Board of Funeral Directors and Embalmers has **WITHDRAWN** the proposed regulation entitled, "VR 320-01-04, Resident Trainee Program for Funeral Service," published in 10:8 VA.R. 1981-1991 January 10, 1994. The agency intends to publish new proposed regulations in the near future.

VA.R. Doc. No. R94-618; Filed February 21, 1994, 9:23 a.m.

BOARD OF MEDICINE

Title of Regulation: VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.

Statutory Authority: §§ 54.1-2400, 54.1-2935, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia.

Public Hearing Date: N/A - Written comments may be submitted until May 23, 1994.

(See Calendar of Events section for additional information)

Basis: Sections 54.1-2400, 54.1-2935, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia provide the statutory basis for promulgation of these amendments by the Board of Medicine.

Purpose: The proposed amendments are designed to ensure public protection by establishing standards for licensure and practice of a limited license, intern or resident license; providing standardized reference to schools not approved by an accrediting agency recognized by the board; and respecifying examination fees for the PMLEXIS.

The proposed amendments address nine specific areas: (i) application requirements for a limited professorial license, (ii) requirements governing the practice with a limited professorial license, (iii) application requirements for full licensure after continuous limited professorial practice, (iv) application requirements for a limited fellow license, (v) requirements governing the practice with a limited fellow license, (vi) application requirements for a temporary intern or resident license, (vii) requirements governing the practice with an intern or resident license, (viii) inappropriate definitions and reference to schools not approved by an accrediting agency recognized by the board, and (ix) fees for the Podiatric Medical Licensure Examination (PMLEXIS).

Substance: Proposed changes are as follows:

§ 1.1 B deletes the definitions of approved foreign institutions, foreign institutions, home country, and respecifies the definition of principal site.

§ 1.2 deletes reference to VR 465-02-02: Approval of Foreign Medical Schools and Other Foreign Institutions that Teach the Healing Arts.

§ 2.2 A 3 deletes reference to "foreign institutes" and respecifies as "schools not approved by an accrediting agency recognized by the board."

§ 2.2 A 3 a deletes reference to VR 465-02-02: Approval of Foreign Medical Schools and Other Foreign Institutions that Teach the Healing Arts.

§§ 2.2 A 3 b through 2.2 A 4 b 3 delete references to "foreign institutes" and respecify as "schools not approved by an accrediting agency recognized by the board," specify requirements for obtaining full licensure by examination after continuous full-time practice with a limited professorial license in Virginia, and delete references to "approved foreign institutions" and "home country."

§§ 4.1 B 2 through 4.1 B 4 delete references to "foreign medical schools" and respecify as "schools not approved by an accrediting agency recognized by the board," and specify requirements for obtaining full licensure by endorsement after continuous full-time practice with a limited professorial license in Virginia.

§ 4.4 A establishes application requirements for a limited professorial license.

§ 4.4 B establishes requirements governing the practice with a limited professorial license.

§ 4.4 C establishes requirements for obtaining full licensure by endorsement after continuous full-time practice with a limited professorial license in Virginia.

§ 4.4 D establishes application requirements for a limited fellow license.

§ 4.4 E establishes requirements governing the practice with a limited fellow license.

§ 4.5 A establishes application requirements for a temporary intern or resident license.

§§ 4.5 B through 4.5 F establish requirements governing the practice with an intern or resident license.

§ 7.1 B respecifies the Podiatric Medical Licensure Examination (PMLEXIS) fee at \$350.

Issues:

1. A regulation is promulgated to establish application

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standards for a limited professorial license.

2. A regulation is promulgated to establish standards governing the practice with a limited professorial license.

3. Regulations are promulgated to establish and specify standards for obtaining full licensure after continuous full-time practice with a limited professorial license in Virginia.

4. A regulation is promulgated to establish application standards for a limited fellow license.

5. A regulation is promulgated to establish standards governing the practice with a limited fellow license.

6. A regulation is promulgated to establish application standards for an intern or resident license.

7. Regulations are promulgated to establish standards governing the practice with an intern or resident license.

8. Regulations are promulgated to delete inappropriate definitions and reference to schools not approved by an accrediting agency recognized by the board and associated terms.

9. A regulation is promulgated to increase the Podiatric Medical Licensure Examination (PMLEXIS) fee from \$325 to \$350.

Impact:

A. Impact on the Agency:

1. The board projects a cost of \$8,000 to print new regulations and mail a copy to each of the affected practitioners and residency directors. The cost includes staff time for preparation and mailing the documents.

2. The board projects a cost of \$10,000 to enforce the amendments. The cost is based upon investigations as will be required, review by the staff, and the conduction of hearings.

B. The funds to address all identified fiscal impacts of the Board of Medicine are derived fees paid by licensees, certified practitioners, applicants for licensure and certification, and examinations.

C. Number and types of regulated entities affected:

- 50 Medical Doctors (Foreign educated)
- 60 Limited Licensees
- 2,500 Temporary Licensees (Interns/Residents)
- 5 Podiatrists

D. The standardized reference to "schools not approved by an accrediting agency recognized by the board" will not affect foreign educated medical doctor's costs.

The expense to professorial licensees seeking full licensure is dependent upon previous or current successful completion of ECFMG testing and board examination (USMLE Part III). The cost for ECFMG testing and certification is \$830 one time and would affect up to 60 professorial limited licensees. The cost for the board examination is \$550 and combined with the ECFMG cost, up to 30 professorial limited licensees would pay \$1,380 each for full licensure one time.

The costs to professorial licensees for full licensure is the same as the costs for nonprofessorial foreign educated candidates seeking full licensure by examination.

The regulations pertaining to interns and residents will not affect the costs to such practitioners.

The increased cost to podiatrists applying for licensure by examination will be \$25 each one time and will affect five podiatrists per year.

Summary:

The proposed amendments establish requirements for a limited license and temporary intern or residency license, provide standardized reference to schools not approved by an accrediting agency recognized by the board, and respecify examination fees for the PMLEXIS, pursuant to §§ 54.1-2400, 54.1-2935, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia.

The proposed amendments address nine specific areas: (i) application requirements for a limited professorial license, (ii) requirements governing the practice with a limited professorial license, (iii) application requirements for full licensure after continuous limited professorial practice, (iv) application requirements for a limited fellow license, (v) requirements governing the practice with a limited fellow license, (vi) application requirements for a temporary intern or resident license, (vii) requirements governing the practice with an intern or resident license, (viii) inappropriate definitions and reference to schools not approved by an accrediting agency recognized by the board, and (ix) fees for the Podiatric Medical Licensure Examination (PMLEXIS).

VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.

PART I. GENERAL PROVISIONS.

§ 1.1. Definitions.

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A. The following words and terms, when used in these regulations, shall have the meaning ascribed to them in § 54.1-2900 of the Code of Virginia:

Acupuncture

Board

Clinical psychologist

Practice of clinical psychology

Practice of medicine or osteopathy

Practice of chiropractic

Practice of podiatry

The healing arts.

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

"American institution" means any accredited licensed medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located in the United States, its territories, or Canada.

"Approved foreign institution" means any foreign institution that is approved by the board under the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.

"Foreign institution" means any medical school, college of osteopathic medicine, school of podiatry, chiropractic college, or institution of higher education offering a doctoral program in clinical psychology, located elsewhere than in the United States, its territories, or Canada.

"Home country" means the country in which a foreign institution's principal teaching and clinical facilities are located.

"Principal site" means the location in the home country where a foreign institution's principal country where teaching and clinical facilities are located.

§ 1.2. Approval of foreign medical schools.

A separate Virginia State Board of Medicine regulation, VR 465-02-02, Requirements for Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts, is incorporated by reference in these regulations. Prospective applicants for licensure in Virginia who studied at a foreign institution should refer to that regulation in addition to the regulations contained here.

§ 1.3. 1.2. Public Participation Guidelines.

A separate board regulation, VR 465-01-01, entitled Public Participation Guidelines, which provides for involvement of the public in the development of all regulations of the Virginia State Board of Medicine, is incorporated by reference in these regulations.

§ 1.4. 1.3. Advertising ethics.

A. Any statement specifying a fee for professional services which does not include the cost of all related procedures, services and products which, to a substantial likelihood will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person, shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bonafide emergency.

C. Advertisements of discounts shall disclose the full fee and documented evidence to substantiate the discounted fees.

§ 1.5. 1.4. Vitamins, minerals and food supplements.

A. The use or recommendations of vitamins, minerals or food supplements and the rationale for that use or recommendation shall be documented by the practitioner. The rationale for said use must be therapeutically proven and not experimental.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in toxic doses.

C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

§ 1.6. 1.5. Anabolic steroids.

It shall be considered unprofessional conduct for a licensee of the board to sell, prescribe, or administer anabolic steroids to any patient for other than accepted therapeutic purposes.

§ 1.7. 1.6. Misleading or deceptive advertising.

A. A licensee or certificate holder's authorization of or use in any advertising for his practice of the term "board

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certified" or any similar words or phrase calculated to convey the same meaning shall constitute misleading or deceptive advertising under § 54.1-2914 of the Code of Virginia, unless the licensee or certificate holder discloses the complete name of the specialty board which conferred the aforementioned certification.

B. It shall be considered unprofessional conduct for a licensee of the board to publish an advertisement which is false, misleading, or deceptive.

§ 1-8. 1.7. Current business addresses.

Each licensee shall furnish the board his current business address. All notices required by law or by these regulations to be mailed by the board to any such licensee shall be validly given when mailed to the latest address given by the licensee. Any change of address shall be furnished to the board within 30 days of such change.

§ 1-9. 1.8. Solicitation or remuneration in exchange for referral.

It shall be unprofessional conduct for a licensee of the board to knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.1-179 of the Code of Virginia, or hospital as defined in § 32.1-123.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, § 1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.

§ 1-10. 1.9. Pharmacotherapy for weight loss.

A. It shall be unprofessional conduct for a physician to prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. It shall also be unprofessional conduct for a physician to prescribe amphetamine-like drugs, Schedules III and IV, for the purpose of weight reduction or control in the treatment of obesity, except as a short-term adjunct to a therapeutic regimen of weight reduction.

C. It shall be unprofessional conduct for a physician to prescribe amphetamine-like substances for use as an anorectic agent in children under 12 years of age.

PART II.

LICENSURE: GENERAL REQUIREMENTS AND LICENSURE BY EXAMINATION.

§ 2.1. Licensure, general.

A. No person shall practice medicine, osteopathy, chiropractic, podiatry, acupuncture, or clinical psychology in the Commonwealth of Virginia without a license from

this board, except as provided in § 4.3, Exemption for temporary consultant, of these regulations.

B. For all applicants for licensure by this board except those in clinical psychology, licensure shall be by examination by this board or by endorsement, whichever is appropriate.

C. Applicants for licensure in clinical psychology shall take the examination of the Virginia State Board of Psychology, which will recommend those qualifying to the Board of Medicine for licensure.

§ 2.2. Licensure by examination.

A. Prerequisites to examination.

1. Every applicant for examination by the Board of Medicine for initial licensure shall:

a. Meet the educational requirements specified in subdivision 2 or 3 of this subsection;

b. File the complete application and credentials required in subdivision 4 of this subsection with the executive director of the board not less than 75 days prior to the date of examination; and

c. Pay the appropriate fee, specified in § 7.1, of these regulations, at the time of filing the application.

2. Education requirements: Graduates of American institutions.

Such an applicant shall be a graduate of an American institution that meets the criteria of subdivision a, b, c, or d of § 2.2 A 2, whichever is appropriate to the profession in which he seeks to be licensed:

a. For licensure in medicine. The institution shall be a medical school that is approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical Schools or its appropriate subsidiary agencies or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

b. For licensure in osteopathy. The institution shall be a college of osteopathic medicine that is approved or accredited by the Committee on Colleges and Bureau of Professional Education of

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the American Osteopathic Association or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

c. For licensure in podiatry. The institution shall be a school of podiatry approved and recommended by the Council on Podiatry Education of the American Podiatry Medical Association or any other organization approved by the board.

An applicant shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

d. For licensure in chiropractic.

(1) If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

(2) If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

3. Educational requirements: Graduates and former students of ~~foreign institutions, schools not approved by an accrediting agency recognized by the board shall:~~

a. ~~No person who studied at or graduated from a foreign institution shall be eligible for board examination unless that institution has been granted approval by the board according to the provisions of VR 465-02-2, Regulations for Granting Approval of Foreign Medical Schools and Other Foreign Institutions That Teach the Healing Arts.~~

b. a. A graduate of an approved foreign institution applying for board examination for licensure shall also Present documentary evidence that he:

(1) Was enrolled and physically in attendance at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the

degree requirements while enrolled two consecutive academic years at the institution's principal site.

(2) Received a degree from the institution; and

(3) Has fulfilled the applicable requirements of § 54.1-2930 of the Code of Virginia.

(4) Has completed three years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

(a) An approved fellowship program; or

(b) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

(5) The board may substitute continuous full-time practice of five years or more with a limited professorial license in Virginia, and one year of postgraduate training in a foreign country, in lieu of three years of postgraduate training.

~~(5) (6) The Virginia Board of Medicine recognizes as accrediting agencies the Liaison Committee on Graduate Medical Education (LCGME) and the Liaison Committee on Medical Education (LCME) of the American Medical Association, the American Osteopathic Association and the American Podiatric Medical Association and the License Medical Council of Canada (LMCC) or other official accrediting bodies recognized by the American Medical Association.~~

e. b. A graduate of an approved foreign institution a school not approved by an accrediting agency recognized by the board applying for examination for licensure in medicine or osteopathy shall also possess a standard Educational Council of Foreign Medical Graduates certificate (ECFMG), or its equivalent. Proof of licensure by the board of another state or territory of the United States or a Province of Canada may be accepted in lieu of ECFMG certification.

d. c. An applicant for examination for licensure in medicine who completed all degree requirements except social services and postgraduate internship at an approved foreign institution a school not approved by an accrediting agency recognized by the board shall be admitted to examination provided

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that he:

(1) Was enrolled at the institution's principal site for a minimum of two consecutive years and fulfilled at least half of the degree requirements while enrolled at the institution's principal site;

(2) Has qualified for and completed an appropriate supervised clinical training program as established by the American Medical Association;

(3) Has completed the postgraduate hospital training required of all applicants for licensure as defined in § 54.1-2930 of the Code of Virginia; and

(4) Has completed three years of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering an approved internship or residency training program when such a program is approved by an accrediting agency recognized by the board for internship and residency. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

(a) An approved fellowship program; or

(b) A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

(5) The Virginia Board of Medicine recognizes as accrediting agencies the Liaison Committee on Graduate Medical Education (LCGME) and the Liaison Committee on Medical Education (LCME) of the American Medical Association, the American Osteopathic Association and the American Podiatric Medical Association and the License Medical Council of Canada (LMCC) or other official accrediting bodies recognized by the American Medical Association.

(6) Presents a document issued by the ~~approved foreign institution school not approved by an accrediting agency recognized by the board~~ certifying that he has met all the formal requirements of the institution for a degree except social services and postgraduate internship.

4. Credentials to be filed prior to examination. Applicants shall file with the executive director of the board, along with their applications for board examination (and at least 75 days prior to the date of examination) the credentials specified in subdivisions a, b, or c of § 2.2 A 4, whichever are appropriate:

a. Every applicant who is a graduate of an American institution shall file:

(1) Documentary evidence that he received a degree from the institution; and

(2) A complete chronological record of all professional activities since graduation, giving location, dates, and types of services performed.

b. Every applicant who attended a ~~foreign institution school not approved by an accrediting agency recognized by the board~~ shall file:

(1) The documentary evidence of education required by subdivision 3 ~~b a~~, ~~e b~~, or ~~d c~~ of this subsection, whichever is or are appropriate;

(2) ~~For~~ All such documents not in the English language, a translation made and endorsed by the ~~a~~ consul of the ~~home country of the applicant~~ or by a professional translating service; and

(3) A complete chronological record of all professional activities since the applicant attended the ~~foreign institution school not approved by an accrediting agency recognized by the board~~, giving location, dates, and types of services performed.

c. Every applicant discharged from the United States military service within the last 10 years shall in addition file with his application a notarized photostatic copy of his discharge papers.

B. Applicants for licensure by board examination shall take the appropriate examination prescribed by the board as provided in § 3.1 Examinations, of these regulations.

§ 2.3. Supervision of unlicensed persons practicing as psychologists in exempt settings ; *reporting requirements* .

A. ~~Supervision~~. Pursuant to subdivision 4 of § 54.1-3601 of the Code of Virginia, supervision by a licensed psychologist ; shall mean that the supervisor shall:

1. Provide supervision of unlicensed personnel who are providing psychological services as defined in § 54.1-3600 and who are functioning in practice and title as a professional psychologist, including the review of assessment protocols, intervention plans and psychological reports, with review denoted by countersignature on all client records and reports as specified in the required protocols within 30 days of origination;

2. Determine and carry out instructional and evaluative consultation with supervisees appropriate to their levels of training and skill, and adjust their service delivery according to current standards of professional practice; and

3. Supervise only those psychological services that fall within the supervisor's area of competence as demonstrated by his own professional practice and

experience.

B. Reporting. A clinical psychologist who is providing supervision, as provided for in subdivision 4 of § 54.1-3601, shall:

1. Submit to the board, within 120 days of the effective date of this regulation, a copy of the supervisory protocol established for each unlicensed supervisee and signed by the supervisor, supervisee, and authorized representative of the institution or agency.

2. Notify the board of any changes in supervisory relationships, including terminations or additions, prior to or within 10 days of such change, with copies of supervisory protocol for all new supervisory relationships to follow within 30 days of such notice.

PART III. EXAMINATIONS.

§ 3.1. Examinations, general.

The following general provisions shall apply for applicants taking Board of Medicine examinations:

A. Applicants for licensure in medicine and osteopathy may take Components I and II of the Federation Licensing Examination (FLEX) separately or as a unit. However, in no case shall an applicant who has not passed Component I be eligible to sit for Component II as a separate examination. The examination results shall be reported to the candidate as pass/fail.

1. Applicants for licensure in medicine and osteopathy may be eligible to sit for Step 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed Steps 1 and 2 of the United States Medical Licensing Examination (USMLE).

2. Applicants who have successfully passed Component I of the FLEX may be eligible to sit for Step 3 of the United States Medical Licensing Examination (USMLE) for licensure in Virginia.

B. Applicants who have taken both Components I and II of the Federation Licensing Examination (FLEX), in one sitting, and have failed to pass both components, or have taken and passed only one component in another state or territory of the United States, the District of Columbia, or Province of Canada, and have met all other requirements for licensure in Virginia may be eligible to take the failed or missing component upon payment of the fee prescribed in § 7.1.

C. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination, Parts I and II, to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia. The examination

results shall be reported to the candidate as pass/fail.

D. Applicants for licensure in chiropractic shall provide evidence of having passed the National Board of Chiropractic Examiners Examination, Parts I, II and III, to be eligible to sit for the Virginia licensure examination administered by the board. Applicants who graduated prior to January 31, 1991, shall not be required to show evidence of having passed the National Board of Chiropractic Examiners Examination Part III to be eligible to sit for the licensure examination required by the board. A minimum score of 75 is required to pass the examination.

§ 3.2. Reexamination.

A. An applicant for licensure by examination who fails three consecutive attempts to pass the examination(s) administered by the board shall be eligible to sit for another series of three consecutive attempts upon presenting proof to the Credentials Committee of the board that he has fulfilled the requirements of subsection A, B, or C, or D of this section, whichever is appropriate.

A. B. An applicant for licensure in medicine or osteopathy who fails three consecutive attempts to pass Component I and Component II, or Parts I, II, and III of the FLEX examination or the United States Medical Licensing Examination in Virginia or any other state or territory of the United States, the District of Columbia, or Province of Canada, or a combination of either of these examinations, shall engage in one year of additional postgraduate training to be obtained in a hospital in the United States or Canada approved by the American Medical Association or the American Osteopathic Association.

B. C. An applicant for licensure in podiatry who fails three consecutive attempts to pass the Virginia examination administered by the board shall appear before the Credentials Committee of the board and shall engage in such additional postgraduate training as may be deemed appropriate by the Credentials Committee.

C. D. An unsuccessful candidate for chiropractic licensure after each series of three unsuccessful attempts for licensure by examination, shall engage in one year of additional professional training approved by the board before he will be eligible to retake another series of examinations.

§ 3.3. Administration of examination.

A. The board may employ monitors for the examination.

B. For examinations given by the board other than those for which answer sheets are furnished, plain paper shall be used, preferably white, and no reference shall be made indicating either school or date of graduation. One side of paper only may be written upon and as soon as each sheet is finished, it shall be reversed to prevent its being

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read by others.

C. Questions will be given out and papers collected punctually at the appointed time and all papers shall be handed in at once when expiration time is announced by the chief proctor.

D. Sections of the examination shall be in such sequence as may be determined by the Federation Licensure Examination (FLEX) Committee or appropriate testing agency.

E. The order of examination shall be posted or announced at the discretion of the board. If the board has no objections, the examiners may exchange hours or days of monitoring the examination.

F. For the guidance of examiners and examinees, the following rules shall govern the examination.

1. Only members of the board, office staff, proctors, and applicants shall be permitted in the examination room, except by consent of the chief proctor.

2. Applicants shall be seated as far apart as possible at desks or desk chairs and each shall have in plain view an admission card bearing his number and photograph.

3. No examinee shall have any compendium, notes or textbooks in the examination room.

4. Any conversation between applicants will be considered prima facie evidence of an attempt to give or receive assistance.

5. Applicants are not permitted to leave the room except by permission of and when accompanied by an examiner or monitor.

6. The use of unfair methods will be grounds to disqualify an applicant from further examination at that meeting.

7. No examiner shall tell an applicant his grade until the executive director has notified the applicant that he has passed or failed.

8. No examination will be given in absentia or at any time other than the regularly scheduled examination.

9. The chief proctor shall follow the rules and regulations recommended by the FLEX Test Committee or other testing agencies.

§ 3.4. Scoring of examination.

Scores forwarded to the executive director shall be provided to the candidate within 30 days or receipt of the scores provided by the testing service.

PART IV. LICENSURE BY ENDORSEMENT.

§ 4.1. Licensure by endorsement.

A. An applicant for licensure by endorsement will be considered on his merits and in no case shall be licensed unless the Credentials Committee is satisfied that he has passed an examination equivalent to the Virginia Board of Medicine examination at the time he was examined and meets all requirements of Part II of these regulations.

B. A Doctor of Medicine who meets the requirements of Part II of these regulations and has passed the examination of the National Board of Medical Examiners, FLEX, United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada may be accepted for licensure by endorsement without further examination.

No applicant for licensure to practice medicine and surgery by endorsement will be considered for licensure unless the applicant has met all the following requirements for pre or postgraduate training as follows:

1. Graduates of schools of medicine approved by an accrediting agency recognized by the board shall have completed one year of satisfactory postgraduate training as an intern or resident in a hospital approved by the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Medical Association for intern or residency training.

2. Graduates of schools of medicine not approved by an accrediting agency recognized by the board who serve supervised clinical training in the United States as part of the curriculum of a ~~foreign medical school,~~ *school not approved by an accrediting agency recognized by the board,* shall serve the clerkships in an approved hospital, institution or school of medicine offering an approved residency program in the specialty area for the clinical training received.

3. Graduates of schools of medicine not approved by an accrediting agency recognized by the board shall have completed three years of satisfactory postgraduate training as an intern or resident in a hospital approved by the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Medical Association for intern or residency training. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

a. An approved fellowship program; or

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b. A position teaching medical students, interns, or residents in a medical school program approved by an accrediting agency recognized by the board for internship and residency training.

4. The board may substitute continuous full-time practice of five years or more with a limited professorial license in Virginia, and one year of postgraduate training in a foreign country, in lieu of the three years of postgraduate training.

4. 5. An applicant for licensure by the FLEX examination or the United States Medical Licensing Examination who has experienced three unsuccessful attempts, shall submit proof of one additional year of approved postgraduate studies in the United States following each series of three attempts to pass the FLEX or the United States Medical Licensing Examination to be eligible for licensure to practice medicine and surgery in Virginia.

5. 6. Applicants who have sat for the United States Medical Licensing Examination shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period.

C. A Doctor of Osteopathy who meets the requirements of Part II of these regulations and has passed the examination of the National Board of Osteopathic Examiners may be accepted for licensure by endorsement without further examination.

No applicant for licensure to practice osteopathy by endorsement will be considered for licensure unless the applicant has met all the following requirements for pre or postgraduate training as follows:

1. Graduates of schools of osteopathy approved by an accrediting agency recognized by the board shall have completed one year of satisfactory postgraduate training as an intern or resident in a hospital approved by the American Osteopathic Association, the American Medical Association, Licensing Medical Council of Canada or other official accrediting body recognized by the American Osteopathic Association, or the American Medical Association for intern or residency training.

2. Graduates of schools of osteopathy not approved by an accrediting agency recognized by the board who serve supervised clinical training in the United States as part of curriculum of a foreign osteopathic school, shall serve the clerkships in an approved hospital, institution or school of osteopathy or medicine offering an approved residency program in the specialty area for the clinical training received.

3. Graduates of schools of osteopathy not approved by an accrediting agency recognized by the board shall have completed three years of satisfactory postgraduate training as an intern or resident in a

hospital approved by the American Osteopathic Association, the Accreditation Council for Graduate Medical Education, Licensing Medical Council of Canada or other official accrediting body recognized by the American Osteopathic Association, or the American Medical Association for intern or residency training. The board may substitute other postgraduate training or study for up to two years of the three-year requirement when such training or study has occurred in the United States or Canada and is:

a. An approved fellowship program; or

b. A position teaching osteopathic or medical students, interns, or residents in an osteopathic or medical school program approved by an accrediting agency recognized by the board for internship and residency training.

4. An applicant for licensure by the FLEX examination or the United States Medical Licensing Examination who has experienced three unsuccessful attempts, shall submit proof of one additional year of approved postgraduate studies in the United States following each series of three attempts to pass the FLEX or the United States Medical Licensing Examination to be eligible for licensure to practice osteopathy and surgery in Virginia.

5. Applicants who have sat for the United States Medical Licensing Examination shall provide evidence of passing Steps 1, 2, and 3 within a seven-year period.

D. A Doctor of Podiatry who meets the requirements of Part II of these regulations, and has passed the National Board of Podiatry Examiners examination and has passed a clinical competence examination equivalent to the Virginia Board of Medicine examination may be accepted for licensure by endorsement without further examination.

E. A Doctor of Chiropractic who meets the requirements of Part II of these regulations, who has passed the National Board of Chiropractic Examiners examination, and has passed an examination equivalent to the Virginia Board of Medicine Part III examination, may be accepted for licensure without further examination.

§ 4.2. Licensure to practice acupuncture.

Acupuncture is an experimental therapeutic procedure, used primarily for the relief of pain, which involves the insertion of needles at various points in the human body. There are many acupuncture points, and these points are located on most portions of the human body. Insufficient information is available regarding the general usefulness of acupuncture and the risks attendant. Among the risks that attend upon it are the possibilities of prolonged and inappropriate therapy. It is clear that the administration of acupuncture is accompanied by the possibility of serious side effects and injuries, and there are reported cases of

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such injuries. Possible complications and injuries include peritonitis, damage from broken needles, infections, serum hepatitis, acquired immunity deficiency syndrome, pneumothorax, cerebral vascular accident (stroke), damage to the eye or the external or middle ear, and the inducement of cardiac arrhythmia.

In the judgment of the board, acupuncture shall be performed only by those practitioners of the healing arts who are trained and experienced in medicine, as only such a practitioner has (i) skill and equipment to determine the underlying cause of the pain; (ii) the capability of administering acupuncture in the context of a complete patient medical program in which other methods of therapeutics and relief of pain, including the use of drugs and other medicines, are considered and coordinated with the acupuncture treatment; and (iii) skill and training which will minimize the risks attendant with its use.

Based on the foregoing considerations, the board will license as acupuncturists only doctors of medicine, osteopathy, and podiatry, as only these practitioners have demonstrated a competence in medicine by passing the medicine/osteopathy licensure examination or podiatry licensure examination.

No person shall practice acupuncture in the Commonwealth of Virginia without being licensed by the board to do so.

The board shall license as acupuncturists only licensed doctors of medicine, osteopathy, and podiatry. Such licensure shall be subject to the following condition: The applicant shall first have obtained at least 200 hours of instruction in general and basic aspects, specific uses and techniques of acupuncture and indications and contraindications for acupuncture administration.

A podiatrist may use acupuncture only for treatment of pain syndromes originating in the human foot.

The licensee shall maintain records of the diagnosis, treatment and patient response to acupuncture and shall submit records to the board upon request.

Failure to maintain patient records of those patients treated with acupuncture or failure to respond to the board's request for patient records within 30 days shall be grounds for suspension or revocation of a license to practice acupuncture.

§ 4.3. Exemption for temporary consultant.

A. A practitioner may be exempted from licensure in Virginia if:

1. He is authorized by another state or foreign country to practice the healing arts;
2. Authorization for such exemption is granted by the executive director of the board; and

3. The practitioner is called in for consultation by a licensee of the Virginia Board of Medicine.

B. Such practitioner shall not open an office or designate a place to meet patients or receive calls from his patient within this Commonwealth, nor shall he be exempted from licensure for more than two weeks unless such continued exemption is expressly approved by the board upon a showing of good cause.

§ 4.4. Limited licenses to foreign medical graduates.

A. A physician who graduated from a school not approved by an accrediting agency recognized by the board applying for a limited professorial license to practice medicine in an approved medical school or college in Virginia shall:

1. Submit evidence of authorization to practice medicine in a foreign country.

2. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent.

3. Submit a recommendation from the dean of an accredited medical school in Virginia that the applicant is a person of professorial rank whose knowledge and special training will benefit the medical school.

B. The limited professorial license applies only to the practice of medicine in hospitals and outpatient clinics where medical students, interns or residents rotate and patient care is provided by the medical school or college recommending the applicant. The license will be valid for one year and may be renewed annually upon recommendation of the dean of the medical school and upon continued full-time employment as a faculty member.

C. An individual who has practiced with a limited professorial license for five continuous years may have a waiver when applying for a full license to practice medicine in the Commonwealth of Virginia. The limited professorial licensee applying for a full license shall meet the requirements of §§ 2.2 and 4.1.

D. A physician who graduated from a school not approved by an accrediting agency recognized by the board applying for a limited fellow license to practice medicine in an approved medical school or college in Virginia shall:

1. Submit evidence of authorization to practice medicine in a foreign country.

2. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent.

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3. Submit a recommendation from the dean of an accredited medical school in Virginia that the applicant is a person of fellow rank whose knowledge and special training will benefit the medical school.

E. The limited fellow license applies only to the practice of medicine in hospitals and outpatient clinics where medical students, interns or residents rotate and patient care is provided by the medical school or college recommending the applicant. The license will be valid for one year and may be renewed not more than twice upon the recommendation of the dean of the medical school and upon continued full-time employment as a fellow.

§ 4.5. Temporary licenses to interns and residents.

A. An intern or resident applying for a temporary license to practice in Virginia shall:

1. Successfully complete the preliminary academic education required for admission to examinations given by the board in his particular field of practice, and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.

2. Submit a recommendation from the applicant's chief or director of graduate medical education of the approved internship or residency program specifying acceptance. The beginning and ending dates of the internship or residency shall be specified.

3. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent if the candidate graduated from a school not approved by an accrediting agency recognized by the board.

B. The intern or resident license applies only to the practice in the hospital or outpatient clinics where the internship or residency is served. Outpatient clinics in a hospital or other facility must be a recognized part of an internship or residency program.

C. The intern or resident license shall be renewed annually upon the recommendation of the chief or director of graduate medical education of the internship or residency program no more than five times.

A residency program transfer request shall be submitted to the board in lieu of a full application.

D. The extent and scope of the duties and professional services rendered by the intern or resident shall be confined to persons who are bona fide patients within the hospital or who receive treatment and advice in an outpatient department of the hospital or outpatient clinic where the internship or residency is served.

E. The intern and resident shall be responsible and

accountable at all times to a fully licensed member of the staff where the internship or residency is served. The intern and resident is prohibited from employment outside of the graduate medical educational program where a full license is required.

F. The intern or resident shall abide by the respective accrediting requirements of the internship or residency as approved by the Liaison Council on Graduate Education of the American Medical Association, American Osteopathic Association, American Podiatric Medical Association, or Council on Chiropractic Education.

PART V.

RENEWAL OF LICENSE; REINSTATEMENT.

§ 5.1. Renewal of license.

Every licensee who intends to continue his practice shall renew his license biennially during his birth month and pay to the board the renewal fee prescribed in § 7.1 of these regulations.

A practitioner who has not renewed his license by the first day of the month following the month in which renewal is required shall be dropped from the registration roll.

An additional fee to cover administrative costs for processing a late application shall be imposed by the board. The additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

§ 5.2. Reinstatement of lapsed license.

A practitioner who has not renewed his certificate in accordance with § 54.1-2904 of the Code of Virginia for two successive years or more and who requests reinstatement of licensure shall:

1. Submit to the board a chronological account of his professional activities since the last renewal of his license; and

2. Pay the reinstatement fee prescribed in § 7.1 of these regulations.

PART VI.

ADVISORY COMMITTEES AND PROFESSIONAL BOARDS.

§ 6.1. Advisory committees to the board.

A. § 6.1. Advisory Committee on Acupuncture.

The board may appoint an Advisory Committee on Acupuncture from licensed practitioners in this Commonwealth to advise and assist the board on all matters relating to acupuncture. The committee shall consist of three members from the state-at-large and two members from the board. Nothing herein is to be

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construed to make any recommendation by the Advisory Committee on Acupuncture binding upon the board. The term of office of each member of the committee shall be for one year or until his successor is appointed.

B. § 6.2. Psychiatric Advisory Committee.

1. A. The board may appoint a Psychiatric Advisory Committee from licensed practitioners in this Commonwealth to examine persons licensed under these regulations and advise the board concerning the mental or emotional condition of such person when his mental or emotional condition is an issue before the board. Nothing herein is to be construed to make any recommendations by the Psychiatric Advisory Committee binding upon the Board of Medicine.

2. B. The term of office for each member of the Psychiatric Advisory Committee shall be one year or until his successor is appointed.

PART VII.

FEES REQUIRED BY THE BOARD.

§ 7.1. Fees required by the board are:

A. Examination fee for medicine or osteopathy: The fee for the Federation Licensing Examination (FLEX) for Component I shall be \$275 and Component II shall be \$325. Upon successfully passing both components of the Federation Licensing Examination (FLEX) in Virginia, the applicant shall be eligible for licensure upon payment of a licensure fee of \$125 to the board. The fee for the United States Medical Licensing Examination (USMLE) shall be \$550.

B. Examination fee for podiatry: The fee for the Podiatry Licensure Examination shall be ~~\$325~~ \$350.

C. Examination fee for chiropractic: The fee for the Virginia Chiropractic Examination shall be \$250.

D. The fees for taking the FLEX, podiatry, and chiropractic examination are nonrefundable. An applicant may, upon request 21 days prior to the scheduled exam, and payment of a \$100 fee, reschedule for the next time such examination is given.

E. The fee for rescoring the Virginia Chiropractic Examination or the Virginia Podiatry Examination shall be \$75.

F. Certification of licensure: The fee for certification of licensure/grades to another state or the District of Columbia by the board shall be \$25. The fee shall be due and payable upon submitting the form to the board.

G. The fee for a limited license issued pursuant to § 54.1-2936 of the Code of Virginia shall be \$125. The annual renewal is \$25.

H. The fee for a duplicate certificate shall be \$25.

I. Biennial renewal of license: The fee for renewal shall be \$125, due in the licensee's birth month. An additional fee to cover administrative costs for processing a late application may be imposed by the board. The additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

J. The fee for requesting reinstatement of licensure pursuant to § 54.1-2921 of the Code of Virginia shall be \$750.

K. The fee for a temporary permit to practice medicine pursuant to § 54.1-2927 B of the Code of Virginia shall be \$25.

L. The fee for licensure by endorsement for medicine, osteopathy, chiropractic, and podiatry shall be \$300. A fee of \$150 shall be retained by the board for a processing fee upon written request from the applicant to withdraw his application for licensure.

M. The fee for licensure to practice acupuncture shall be \$100. The biennial renewal fee shall be \$80, due and payable by June 30 of each even-numbered year.

N. Lapsed license: The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904, which has expired for a period of two years or more, shall be \$250 and shall be submitted with an application for licensure reinstatement.

O. The fee for a limited license issued pursuant to § 54.1-2937 shall be \$10 a year. An additional fee for late renewal of licensure shall be \$10.

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

Q. The fee for taking the Special Purpose Examination (SPEX) shall be \$350. The fee shall be nonrefundable.

R. Any applicant having passed one component of the FLEX examination in another state shall pay \$325 to take the other component in the Commonwealth of Virginia.

NOTICE: The forms used in administering the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture 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 Medicine, 6606 W. Broad Street, Richmond, Virginia, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia.

Instructions for Completing National Boards Endorsement Application (HRB-30-034)
Request for Endorsement of Certification by the National Board of Medical Examiners

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Claims History Sheet
Request for Physician Profile
Clearance from other State Boards
Disciplinary Inquiries
Instructions Regarding the Chiropractic Examination
Application for a Certificate to Practice Chiropractic (HRB-30-058)
General Information Regarding the Examination
Exam: Chiropractic Employment/Professional Activity Questionnaire
Instructions for Completing National Boards of Osteopathic Examiners Endorsement Application (HRB-30-034)
Application for a License to Practice Medicine/Osteopathy (DHP-30-056)
Instructions for Completing Podiatry Endorsement Application (HRB-30-034)
Application for a Certificate to Practice Podiatry (HRB-30-057)
National Board of Podiatric Medical Examiners Request for Scores on Part I and II
Request for Podiatry Disciplinary Action
Licensure Registration

V.A.R. Doc. No. R94-671; Filed March 2, 1994, 12 p.m.

BOARD OF NURSING

Title of Regulation: VR 495-04-1. Public Participation Guidelines.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Date: N/A – Written comments may be submitted through May 20, 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 Nursing 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

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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.

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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. 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 495-04-1. 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. 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.

"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

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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. R94-670; Filed March 2, 1994, 12:00 p.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF) AND CHILD DAY-CARE COUNCIL

Title of Regulation: VR 615-30-01 and 175-03-01. General Procedures and Information for Licensure.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Public Hearing Date: April 4, 1994 - 1 p.m.

Written comments may be submitted until May 21, 1994.

(See Calendar of Events section)

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for additional information)

Basis: Sections 63.1-174 and 63.1-202 of the Code of Virginia provide the statutory basis for the State Board of Social Services to promulgate standards for adult day care centers, adult care residences, private child placing agencies, child caring institutions, independent foster homes, family day homes, family day systems and child day center systems. Section 63.1-202 provides the statutory base for the Child Day-Care Council to promulgate standards for child day centers, including those centers operating as child day camps, preschools and nursery schools, and before and after school day programs.

Purpose: The purpose of this regulation is to define the rights, responsibilities and procedures for licensees and the Department of Social Services during the licensing process. The proposed regulation was revised to include statutory changes to both Chapters 9 and 10 of Title 63.1 and to clarify and simplify some licensing procedures for both applicants and licensees and for licensing staff.

Substance: The proposed amendments (i) add child day center systems to the programs that are regulated by the Department of Social Services; (ii) change the names of certain programs regulated by the Department of Social Services to correspond to legislative name changes; (iii) add intermediate sanctions for child welfare agencies to those sanctions already specified in the Code of Virginia; (iv) revise appeal procedures to reflect changes made to the Administrative Process Act; (v) change the name of the "informal appeal process" to "problem solving conference" to distinguish it from the informal conference which is part of the appeal process; and (vi) establish criteria for extended licensure for all licensed programs.

Issues: This regulation addresses the following issues which impact facilities subject to licensure by the Department of Social Services: the license, the licensing process, allowable variances, problem solving conferences, complaint investigation, sanctions, licensing office locations, and schedule of fees for application processing.

Estimated Impact:

A. Regulated entities: The following chart shows the number of facilities as of November 30, 1993, that will be affected by this regulation:

Facility type	Number	Capacity
Adult Day Care Centers	42	1205
Adult Care Residences	550	26,157
Private Child Placing Agencies	39	2070
Child Caring Institutions	11	317
Independent Foster Homes	0	0
Child Day Centers	1399	115,767
Child Day Center Systems	0	0
Family Day Homes	634	5735
Family Day Systems	5	2250
Total	2680	153,501

B. Projected costs to regulated entities: There will be minimal impact on regulated programs. One sanction added for child welfare agencies requires that training may be mandated for the licensee or staff of a child welfare agency with any costs to be borne by the licensee when it has been determined that the lack of such training has led directly to violations of regulations.

C. Projected costs to the agency: There will be minimal cost to the agency for implementation of this regulation. There will be some cost for printing and distributing the new regulation to licensees and interested persons. Normally occurring provider meetings and staff meetings can be used to train licensees and licensing staff.

D. Source of funds: The funding sources for facilities to implement their specific programmatic standards will vary. These sources include:

- consumer fees
- private donations
- USDA reimbursements
- reimbursement for all or a portion of child care tuition by local departments of social services through ADC Day Care, Fee System Day Care, JOBS Day Care, Transitional Day Care, and FSET
- scholarship money to obtain a Child Development Associate credential which is administered by the Department of Social Services
- grants from the Dependent Care Grant administered by the Department of Social Services
- grants from the Council on Child Day Care and Early Childhood Programs which may include funds from the Child Care and Development Block Grant
- funding at the local level
- auxiliary grants

Currently Department of Social Services regulatory activities are supported primarily by General Funds.

Summary:

The proposed amendments (i) add child day center systems to the programs that are regulated by the Department of Social Services; (ii) change the names of certain programs regulated by the Department of Social Services to correspond to legislative name changes; (iii) add intermediate sanctions for child welfare agencies to those sanctions already specified in the Code of Virginia; (iv) revise appeal procedures to reflect changes made to the Administrative Process Act; (v) change the name of the "informal appeal process" to "problem solving conference" to

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distinguish it from the informal conference which is part of the appeal process; and (vi) establish criteria for extended licensure for all licensed programs.

VR 615-30-01. General Procedures and Information for Licensure.

PART I. INTRODUCTION.

§ 1.1. Definitions.

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

"Adult care facility" means a licensed ~~home for adults~~ *adult care residence* or adult day care center.

"Allegation" means an accusation that a facility which is subject to licensure is operating without a license.

"Allowable variance" means (i) permission to meet the intent of a standard by some means other than as specified by the standard, or (ii) the suspension of enforcement of a particular standard or portion of the standard for a stated time period.

"Applicant" means the person, corporation, partnership, association or public agency which has applied for a license.

"Board" means the State Board of Social Services.

"Commissioner" means the Commissioner of the Department of Social Services.

"Complaint" means an accusation that a licensed facility is not in compliance with licensing standards or law.

"Conditional license" means a license which may be issued to a new facility to operate in order to permit the applicant to demonstrate compliance with specified standards.

"Council" means the Child Day-Care Council.

"Denial" means the act of refusing to grant a license after receipt of an original or renewal application.

"Department" means the Department of Social Services.

"Early compliance" means replacement of a provisional or conditional license with a regular license.

"Functional design" means the design features of building and grounds not regulated by the Building Code, necessary for particular activities and operations of a facility subject to licensure by the Department of Social Services.

"Licensee" means the person, corporation, partnership, association or public agency to whom a license is issued and who is legally responsible for compliance with the regulations and statutory requirements related to the facility.

"Probationary status" is the placing of a licensee on notice that the licensed facility is substantially out of compliance with the terms of its license and the health, safety and well-being of children are at risk. Probationary status is a precursor to more serious action such as revocation, denial or injunctive action unless immediate corrective action occurs.

"Provisional license" means a license which may be issued upon expiration of a regular license when the licensee is temporarily unable to substantially comply with the requirements of the standards.

"Regular license" means a license which is issued for 12 months or more as provided in Chapters 9 and 10 of Title 63.1 of the Code of Virginia to a facility determined to be in substantial compliance with applicable standards and regulations. The actual duration of the licensure period is stated on the license.

"Revocation" means the act of terminating a license during its effective dates because of findings of serious noncompliance.

PART II. LICENSING STANDARDS.

§ 2.1. Responsibility of the department.

Through the administration of the licensing program, the Department of Social Services assumes responsibility to ensure that licensed facilities and agencies provide children and adults with at least a minimum level of care in accordance with standards prescribed by the State Board of Social Services and Child Day-Care Council. The department also has the responsibility to investigate allegations. The Virginia Code requires the State Board of Social Services to adopt standards and regulations for the licensure of the following categories of facilities/agencies:

1. Adult day care centers
2. ~~Homes for adults~~ *Adult care residences*
3. *Private* child placing agencies
4. Child caring institutions
5. Independent foster homes
6. Family day ~~care~~ homes
7. Family day ~~care~~ systems.
8. *Child day center systems*

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The Virginia Code requires the Child Day-Care Council to adopt standards and regulations for the licensure of child care day centers.

§ 2.2. Adoption of standards.

The State Board of Social Services or the Child Day-Care Council has adopted a set of standards for each category listed above. The definition of each category and requirements for licensure are contained in each set of standards.

§ 2.3. Standards development/revision process.

A. In developing or revising standards for licensed facilities/agencies, the Department of Social Services, acting as agent for the State Board of Social Services and Child Day-Care Council, adheres to the requirements of the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia) and the public participation process.

B. The department solicits input from licensees, associations of licensees, experts in related fields, advocacy organizations, consumers and the general public in the development or revision of licensing standards through informal and formal comment periods and public hearings.

C. The department conducts periodic reviews and, when necessary, comprehensive revisions of each set of standards to assure that its standards continue to protect vulnerable children and adults in out-of-home care while considering the interests of both providers and consumers of care.

PART III. THE LICENSE.

§ 3.1. General.

A license to operate a facility or agency is issued to a specific person or organization to provide out-of-home care to children or adults. An organization may be a partnership, association, or corporation, or public entity.

§ 3.2. Nontransferability of license.

A license is not transferable when there is a change in the ownership or location of the facility/agency to which the license has been issued.

EXCEPTION: Licenses issued for private child placing agencies and family day care systems are transferable when agencies change location.

§ 3.3. Conditional license.

The department may issue a conditional license to a new facility/agency in order to permit the applicant to demonstrate compliance with specified standards. A conditional license may be effective for any period not to

exceed six consecutive months. When this period expires, the facility/agency must substantially meet the standards or be denied a license. Conditional licenses may be used only for new facilities/agencies.

EXCEPTION: With the approval of the appropriate fire marshal, a second conditional license may be issued to a licensee to permit the licensee additional time to comply with fire safety standards when the licensee has purchased an existing licensed facility for adults.

§ 3.4. Regular license.

A regular license is issued when the activities, services, facilities, and applicant's financial responsibility substantially meet the requirements for a license that are set forth by standards adopted by the State Board of Social Services or the Child Day-Care Council and any additional requirements that may be specified by the Code of Virginia.

§ 3.5. Periods of licensure.

Each license and renewal thereof may be issued for a period of up to three successive years. The criteria for determining the periods of licensure are based on the activities, services, management, and compliance history of the facility.

A triennial license may be issued when a facility's activities, services and management routinely and substantially exceed the minimum standards.

A biennial license may be issued when a facility's services and management routinely meet and maintain compliance with minimum standards and may exceed on a sustained basis in some areas.

An annual license may be issued when a facility's activities, services and management indicate an inconsistent level of compliance but substantial compliance is reached. Some reinforcement and guidance are needed in order for the facility to meet or maintain minimum requirements.

§ 3.5. § 3.6. Provisional license.

When a regular license expires and the applicant is temporarily unable to comply with the requirements of the standards, the department may issue a provisional license for any period not to exceed six months. A provisional license shall not be issued to a facility/agency which holds a conditional license. When a period of six consecutive months of a provisional license expires, the facility/agency must substantially meet the standards and requirements or be denied a license.

EXCEPTION: With the approval of the appropriate fire marshal, a second provisional license may be issued to a facility for adults to permit the licensee additional time to comply with fire safety standards.

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~~§ 3.6.~~ § 3.7. Terms of the license.

A. A facility/agency shall operate within the terms of its license.

B. The terms of any license include:

1. The operating name of the facility/agency;
2. The name of the individual, partnership, association, corporation, or public entity sponsoring the facility/agency;
3. The physical location of the facility/agency;
4. The maximum number of children/adults who may be in care at any time;
5. The period of time for which the license is effective; and
6. For child care facilities/agencies, the age range of children for whom care may be provided.

C. The terms of a license may include other limitations which the department may prescribe within the context of the standards for any facility/agency.

D. The provisional license cites the standards with which the licensee is not in compliance.

E. The conditional license cites the standards with which the licensee must demonstrate compliance when operation begins, and also any standards with which the licensee is not in compliance.

F. Prior to changes in operation which would affect the terms of the license, the licensee shall secure a modification to the terms of the license from the department. (See § 4.8 4.7)

G. *The following documents shall be posted in a prominent place at each public entrance of the licensed premises, when applicable:*

1. *The most recently issued license;*
2. *The most recent compliance plan or a written notice of where it may be reviewed in the facility;*
3. *Probationary status announcements; and*
4. *Denial and revocation notices.*

PART IV. THE LICENSING PROCESS.

§ 4.1. Preapplication consultation.

Upon request, the department's licensing representative will provide consultation to any person(s) seeking

information about obtaining a license. The purpose of such consultation is:

1. To explain standards and the licensing process;
2. To help the potential applicant explore the operational demands of a licensed facility/agency;
3. To provide assistance in locating other sources of information;
4. To alert the potential applicant to the value of assessing the need for a facility/agency in the area to be served;
5. To review the potential applicant's proposed program plans, forms, etc., as they relate to standards; and
6. To alert the potential applicant regarding the need to meet other state and local ordinances, such as health, fire and building codes, where applicable.

§ 4.2. The initial application.

A. Upon request, the Virginia Department of Social Services department will provide an application form for a license to operate a facility/agency. There are a number of licensing offices located throughout the state. The location, telephone number and areas served by each office are provided in Attachment I of this document.

B. The department shall consider an application complete when the application fee and all the required information is submitted in the form required by the department. The schedule of fees for licenses is provided in VR 615-33-01, Fee Requirements for Processing Applications. If the department finds the application incomplete, the applicant will be notified within 15 days of receipt of the incomplete application.

C. The applicant shall complete and submit the application to the department at least 60 days prior to a planned opening date to allow the department time to act on the application.

D. The applicant may withdraw a request for a license.

§ 4.3. Approval of functional design features.

A valid certificate of occupancy is one prerequisite for licensure. When an application is for licensure of a building which has not previously been used for the type of license or Use Group being sought, or when renovations are made in the building, the department must approve functional design features of the building in accordance with applicable department regulations. The procedures are as follows:

1. Prior to beginning construction or renovation, the applicant or prospective applicant shall submit to the

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department floor plans which clearly indicate the use of space and other plans for compliance with all requirements for the building, use of space, and bathroom facilities contained in the applicable regulations.

(NOTE: Applicants and prospective applicants are urged to present their plans for compliance with departmental regulations to the department as early as possible and before entering into contracts in order to assure that the building can be preapproved as meeting the department's regulations. Architects, contractors, or building officials may not be thoroughly familiar with these functional design requirements, and costly errors can be avoided through early review by the department. The plan for structures must clearly indicate the use of space.)

2. The department will notify the applicant or prospective applicant within 10 working days of receipt if the plans to comply are incomplete, identifying the information still needed before the request can be considered complete.

3. When a complete plan is received, the department will issue a Preliminary Approval Statement or a letter indicating disapproval of the plan and the reasons for disapproval.

(NOTE: A Preliminary Approval Statement does not imply that the department will approve the application for licensure since other factors will affect issuance decisions.)

4. All Preliminary Approval Statements are conditional upon there being no change in the proposal or the circumstances affecting them and upon approval of all required fire, health, or building officials.

5. The department will forward a copy of the Preliminary Approval Statement to the appropriate building official.

6. After construction or renovation, ~~Department of~~ *Social Services department* staff will make an on-site inspection to evaluate compliance with the functional design requirements of the applicable regulations. Findings of this on-site inspection will be forwarded to the applicant and the local building official.

§ 4.4. The investigation.

A. At the time of the initial application and annually thereafter, the applicant/licensee shall be responsible for obtaining inspection reports from appropriate fire and health agencies to determine compliance with applicable regulations.

EXCEPTION: Section 4.4 A does not apply to child placing agencies or family day care systems.

1. All buildings shall be inspected and approved by the local building official when required. This approval shall be documented by a Certificate of Use and Occupancy indicating that the building is classified for its proposed licensed purpose.

2. At the time of the initial application and at least annually thereafter, the applicant/licensee shall obtain an inspection report from state or local fire authorities, as applicable, to determine compliance of the building(s) with the Virginia Statewide Fire Prevention Code.

~~The initial application packet and subsequent renewal packets will include the Fire Inspection Report Form and instructions.~~

3. At the time of the initial application and at least annually thereafter, the applicant/licensee shall obtain an inspection report from state or local health authorities which shall include approval of general sanitation, water supply, sewage disposal systems, and food service operations for the building(s) in which the facility is operated.

~~The initial application packet and subsequent renewal packets will include the Report of Environmental Health Inspection form and instructions.~~

B. The department's representative shall make an on-site inspection of the proposed facility/agency and an investigation of the proposed services, as well as an investigation of the character, reputation and financial responsibility of the applicant. Compliance with all standards will be determined by the Department of Social Services.

The licensee is responsible for correcting any areas of noncompliance found during any on-site inspection.

C. The applicant/licensee shall make available to the department's representative the facility's/agency's books and records. The applicant/licensee shall also allow the department's representative to interview the facility's/agency's agents, employees, residents/participants, and any person under its custody, control, direction, or supervision.

D. After the on-site inspection the licensing representative shall discuss the findings of the investigation with the administrator/licensee. As applicable, the applicant shall submit an acceptable plan for correcting any areas of noncompliance following these discussions.

E. At any time during the investigation, an applicant/licensee may request an allowable variance to any standard which creates a special hardship. (See Part V. Allowable Variance.)

§ 4.5. Notice to the applicant of issuance or denial of a license.

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A. When the investigation is completed, the department shall notify the applicant of its decision regarding the issuance of a license.

B. When the decision is to issue a conditional or provisional license, a letter accompanying the license shall refer to any areas of noncompliance with standards or areas where compliance cannot be determined, as well as any limitations on the license. The letter may also contain recommendations for the licensee's consideration. A letter will routinely not accompany the issuance of a regular license.

C. When the department intends to deny the license, the department shall send a letter stating the reasons for this action and the applicant's right to ~~an administrative hearing~~ *appeal the decision*. (See Part VIII.)

§ 4.6. Determination of continued compliance (renewal and monitoring visits).

A. In order to determine continued compliance with standards during the effective dates of the license, the department's licensing representative shall make announced and unannounced visits to the facility/agency during the hours of its operation. The licensee is responsible for correcting any areas of noncompliance found during renewal or monitoring visits.

~~A. B.~~ All licensed child care facilities shall be inspected at least twice a year. At least one unannounced inspection of each licensed facility shall be made each year.

~~B. C.~~ At least two inspections of each licensed adult care facility shall be made each year and in every instance the ~~annual~~ renewal inspection ~~made by the commissioner or his authorized agents~~ shall be unannounced. The commissioner may authorize such other announced or unannounced inspections as he considers appropriate.

~~C. D.~~ The department's representative may also make such visits to any homes/facilities that are approved by the licensee for the placement or care of children as one of the licensed services of the agency.

NOTE: When necessary to respond to excessive workloads or to give priority to higher risk situations, the department may use its discretion to increase or decrease the frequency of announced and unannounced visits made to licensed facilities during the year.

§ 4.7. ~~Problem-solving conferences.~~

~~Licensing staff may initiate a request for problem-solving conferences with applicants or licensees when the need arises.~~

§ 4.8. § 4.7. Modification.

A. The licensee may request a modification of the terms

of a license at any time during the period of the license. The request must be submitted in writing to the department's representative.

The department will evaluate written information about any planned changes in operation which would affect either the terms of the license or the continuing eligibility for a license. A licensing representative may visit the facility during the process of evaluating a proposed modification.

Examples of such changes are: changes in the number of children/adults to be served, staff responsibilities, availability and use of the physical plant, and changes in program focus or needs of the population to be served.

B. If a modification can be granted under the standards, the department shall respond in writing with the modified license. In the event that a new application is needed, the licensee shall receive written notification of such. When the modification cannot be granted, the licensee shall also be advised by letter.

§ 4.9. § 4.8. Early compliance.

A. A provisional or conditional license may be voided and a regular license issued when all of the following conditions exist:

1. The facility/agency complies with all standards listed on the face of the provisional or conditional license well in advance of the expiration date of the provisional or conditional license, and the facility/agency is in substantial compliance with all other standards.

2. Compliance has been verified by an on-site observation by the department's licensing representative or, when applicable, by written evidence provided by the licensee.

3. All other terms of the license remain the same.

B. The licensee shall make a written request to the licensing representative for replacement of a provisional or conditional license with a regular license.

C. When the request is approved by the department, the effective date of the new regular license shall be the same as the beginning date of the voided license.

When the request is not approved, the reasons for this action shall be confirmed to the licensee in writing.

D. Early compliance shall not be considered once a renewal application has been filed by the facility/agency.

§ 4.10. § 4.9. Renewal process.

A. The ~~Department of Social Services~~ *department* shall send an application for renewal of the license to the

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licensee prior to the expiration date of the current license.

B. The licensee shall submit the completed application form along with any required attachments and the application fee prior to the expiration of the current license. It is the applicant's responsibility to complete and return the application prior to the expiration of the current license to assure timely processing. Should a current license expire before a new license is issued, the current license shall remain in effect provided that the completed application was filed and a decision for licensure is pending.

C. The department shall follow the procedure for investigation and notice to the applicant previously outlined in §§ 4.4, 4.5, and 4.6.

PART V. ALLOWABLE VARIANCE.

§ 5.1. *Use of allowable variances.*

Allowable variances are used for one or more of the following:

1. To allow the department some degree of flexibility in the enforcement of requirements, given the rapid and ever changing nature of programs and their unique settings;
2. To allow for greater development of innovative and pilot programs, which were not anticipated in the regulations; and
3. To promote equity across all programs by allowing for variable compliance methods when a regulation places special hardship on a particular facility.

§ 5.2 Conditions for initiating a request.

A licensee/applicant may request an allowable variance when he believes that the existing regulations pose a special hardship and when he believes that either an alternative method of compliance with the intent of the regulation which is causing the hardship, or the actual suspension of all or part of that regulation, would neither endanger the safety or well-being of persons in care nor create a violation of statutes or of the requirements of another regulatory agency.

§ 5.3. Process.

A. Consideration of an allowable variance is initiated when a written request to the issuing office is received from the applicant/licensee. The department's licensing representative may provide consultation to the applicant/licensee in the development of the written request and throughout the allowable variance process.

1. The licensee/applicant shall make a written request for an allowable variance which describes the special

hardship(s) to the existing program or to a planned innovative/pilot program caused by the enforcement of the requirement(s).

2. When possible, the licensee/applicant shall propose alternatives to meet the purpose of the requirement which will ensure the protection and well-being of persons in care.

3. The licensee/applicant should obtain, when requested by the department, the opinions of professionals in the field or documented research, or both, that the proposed activities, facilities, or equipment are not injurious to persons in care.

4. The department can authorize allowable variances only to its own licensing standards, not to regulations of another agency or to any requirement in federal, state, or local laws.

B. The department's representative shall notify the petitioning applicant/licensee of the receipt of his request for an allowable variance and send a recommendation to the person delegated decision-making authority by the department.

The decision is transmitted in writing to the petitioning applicant/licensee with a copy to the department's licensing representative.

C. Approval.

1. The designated authority may attach conditions to the granting of the allowable variance in order to protect persons in care.

2. Allowable variances are conditional upon there being no change in the circumstances which were the basis for the approval. Any allowable variance may be rescinded or modified if conditions change; additional information becomes known which alters the basis for the original decision; the applicant/licensee fails to meet any conditions attached to the allowable variance; or results of the allowable variance jeopardize the safety, comfort, or well-being of persons in care.

3. Allowable variances expire automatically when there is a change in the facility's location or a change in the sponsorship of the facility/agency.

EXCEPTION: Allowable variances issued to *private* child placing agencies and family day care systems are transferable when agencies change location.

4. The department's licensing representative shall review each allowable variance at least annually. At minimum, this review shall address the impact if the allowable variance on persons in care, adherence to any conditions attached, and the continuing need for the allowable variance.

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D. Denial.

1. When the decision is to deny a request for an allowable variance, the reason(s) shall be provided in writing to the applicant/licensee.

2. When a request for an allowable variance is denied, it may be reconsidered if the applicant/licensee submits another written request and provides new or additional supporting information.

3. When a request for an allowable variance is denied by the designated decision-maker and if the petitioner believes that decision was unreasonable, arbitrary, or capricious, the petitioner may request a desk review of that decision. The following shall apply when a desk review is requested:

a. The petitioner shall request this desk review, in writing, within 15 days of the issuance of the denial and shall include such information as necessary to explain the belief that the decision was unreasonable, arbitrary or capricious.

b. The desk review shall be conducted by the person who supervises the designated decision-maker, unless a different person has been assigned desk review responsibility in accordance with the commissioner's formal delegation of authority.

c. The decision of the reviewer shall be reported in writing to the petitioner within 30 days of receiving a complete request for a desk review.

d. The reviewer's decision shall be final and not appealable.

E. When an allowable variance is denied, expires, or is rescinded, routine enforcement of the standard or portion of the standard shall be resumed.

F. The applicant/licensee may at any time withdraw a request for an allowable variance.

PART VI. INFORMAL APPEAL PROCESS PROBLEM SOLVING CONFERENCES .

§ 6.1. *Initiating a request for a problem solving conference.*

When an applicant/licensee has concerns about licensing procedures, interpretation of standards, or the actions of licensing personnel that cannot be resolved satisfactorily in discussion with the assigned licensing representative, the ~~informal appeal~~ *problem solving* steps outlined below are available.

Licensing staff may also initiate a request for problem solving conferences with applicants or licensees when the

need arises.

§ 6.2. *First step review.*

A. The applicant/licensee may request either a desk review by, or a meeting with, the assigned licensing representative's immediate supervisor.

A. B. If the request stems from a desire to contest the findings or conclusions of an inspection, the following procedures shall apply:

1. The applicant/licensee shall make the request within 15 days of receiving the compliance plan.

2. The request shall specify the contested finding or conclusion and shall specify whether a desk review or conference is being requested.

3. The request shall include the applicant's/licensee's reasons or other evidence supporting the request for a review or a conference.

B. C. The first step informal desk review or conference will be held at the supervisor's office unless the supervisor designates a different location. The following procedures shall apply:

1. The supervisor shall report the findings of a desk review in writing within 10 days of receiving the request and supporting materials or shall hold the requested conference within 30 days of receipt of such request and materials.

2. When the request is for a conference, the supervisor shall, within 10 days following the conference, confirm to the applicant/licensee in writing the results of the conference and any subsequent decisions made by the supervisor.

§ 6.3. *Second step review.*

A. If after the first step review, the applicant/licensee believes that the laws, regulations, or departmental policies have been applied or interpreted in a manner that was unreasonable, arbitrary or capricious, he may request a second step review by program supervisory personnel as assigned by the Director of Licensing Programs according to the provisions of this ~~article~~ *section* .

A. B. A second step ~~informal~~ review shall not be requested to challenge the content of an established law, regulation, or policy. However, the application of a law, regulation, or policy may be challenged.

B. C. When second step ~~informal appeals~~ *reviews* are ~~made requested~~ , the request must be in writing and must specify whether the applicant/licensee is requesting a desk review or a conference. Conferences shall be held in the region or in Richmond as designated by the director; the designated location shall be as close to the operation as

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possible.

C. *D.* The second ~~informal~~ *step appeal step review* request shall:

1. Be made within 15 days of the date of the first step response;
2. Specify the reason for requesting the second step informal review and include such information, explanation, or additional materials as necessary to support the applicant's/licensee's belief that the decision reached at the first step was unreasonable, arbitrary or capricious; and
3. Include a copy of relevant materials and correspondence developed at the first step of the informal appeal process.

D. *E.* Within 30 days of receipt of this request, the director's office shall respond in writing or schedule the conference.

E. *F.* When the request is for a conference, the designated program management staff shall, within 10 days following the conference, confirm to the applicant/licensee in writing the results of the conference and any subsequent decisions made by program management staff.

§ 6.4. *Enforcement of disputed regulation.*

Nothing in this ~~article~~ *part* shall prohibit the ~~Department of Social Services department~~ from exercising its responsibility and authority to enforce the disputed regulation during the ~~informal appeal process~~ *problem solving process*, including proceeding directly to ~~denial or revocation of a license~~ *imposition of administrative sanctions*, or recommending petitions for injunction when, in the judgment of the Director, Division of Licensing Programs, there is sufficient risk to persons in care to do so whether or not the steps available in the ~~informal appeal~~ *problem solving* process have been exhausted.

PART VII. COMPLAINT INVESTIGATION.

§ 7.1. *Receipt of complaints.*

Complaints may be received in written or oral form and may be anonymous. The department maintains a parental hot line to respond to complaints regarding child care facilities.

§ 7.2. *Investigation of complaints.*

The department has the responsibility to investigate any complaints regarding alleged violations of the standards or statutes and complaints of the abuse and neglect of persons in care.

NOTE: In an investigation of adult/child abuse, neglect,

or exploitation in a licensed facility, the investigation shall be conducted jointly with the local department of social services whenever possible in accordance with departmental policy.

§ 7.3. *Notification of findings.*

When the investigation is completed, the licensee shall be notified of the findings of the investigation. Any necessary corrective action will be identified.

§ 7.4. *Areas of noncompliance.*

The licensee is responsible for correcting any areas of noncompliance found during a complaint investigation.

PART VIII. SANCTIONS.

§ 8.1. *Violation of standards or statutes.*

The commissioner of the Department of Social Services may impose such sanctions or take such actions as are appropriate for violation of any of the standards or statutes or for abuse/neglect of persons in care. Such sanctions include administrative sanctions and the imposition of a civil penalty or appointment of receivership.

§ 8.2. *Administrative sanctions.*

The following are administrative sanctions which may be imposed against a licensed facility:

1. Reducing the capacity of any ~~adult care licensed~~ facility;
2. Restricting or prohibiting new admissions to any ~~adult care licensed~~ facility;
3. *Placing a child welfare agency on probationary status;*
4. *Mandating training for the licensee or staff of a child welfare agency with any costs to be borne by the licensee;*
5. Denying renewal of the license of any licensed facility; and
6. Revoking the current license of any licensed facility.

§ 8.3. *Civil penalty or appointment or receivership.*

In addition to the administrative sanctions listed in § 8.2 of these regulations the commissioner may:

1. Petition the circuit court or the city or county in which the facility is located to impose a civil penalty against any adult care facility; or

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2. Petition the circuit court for the city or county in which the facility is located to appoint a receiver for any adult care facility.

§ 8.4. *Imposition of sanctions or civil penalties.*

The following reasons may be considered by the department for the imposition of administrative sanctions or the imposition of civil penalties.

1. Failure to demonstrate or maintain compliance with applicable standards or for violations of the provisions of the Code of Virginia;
2. Permitting, aiding, or abetting the commission of any illegal act in the licensed facility/agency;
3. Engaging in conduct or practices which are in violation of statutes and standards relating to abuse, neglect, or exploitation of children/adults; or
4. Deviating significantly from the program or services for which a license was issued without obtaining prior written approval from the department, or failure to correct such deviations within a specified time.

§ 8.5. *Process.*

A. The applicant/licensee will receive a notice of the department's intent to impose an administrative sanction. This notice shall describe the reasons for the imposition of the administrative sanction.

B. Upon receipt of the notice to impose an administrative sanction, the applicant/licensee has the right to appeal the decision in accordance with the Administrative Process Act (§ 9-6.14:1 of the Code of Virginia). The procedures for requesting an administrative hearing filing an appeal shall be outlined in the notice. All appeals from notice of imposition of administrative sanctions shall be received in writing from the applicant/licensee within 15 days of the date of receipt of the notice.

C. In the event the applicant/licensee does not request an administrative hearing appeal within 15 days, the facility/agency must modify the operation such that it meets the requirements of the imposed sanction(s), to conform to the pertinent law or regulation or accept imposition of the sanction.

D. If the facility/agency continues to operate in violation of the imposed sanction(s) after the date the sanction(s) was to have been met, the department shall initiate appropriate administrative/legal action.

E. In requesting the imposition of a civil penalty for any violation in an adult care facility, the department will recommend that the penalty not exceed the lesser of \$5.00 per licensed capacity or \$250 per day for each day the adult care facility is in violation, beginning on the date the

facility was first notified of the violation. The date of notification under this sanction shall be deemed to be the date of receipt by the facility of written notice of the alleged violation. This notice shall include specifics of the violation charged and it shall be hand delivered or sent by overnight express mail or by registered or certified mail, return receipt requested.

F. Upon filing of a petition for appointment of a receiver, the court shall hold a hearing, at which time the department and the licensee of the adult care facility may participate and present evidence.

§ 8.6. *Appeals.*

A. If an administrative hearing is requested, the applicant/licensee has the right to be represented by counsel at the hearing.

B. The hearing shall be conducted by an individual appointed from a roster of attorneys, approved to serve as hearing officers, which is maintained by the Supreme Court of Virginia.

C. Once the hearing is completed, the hearing officer shall submit written findings of fact and conclusion of law and recommendations to the commissioner of the Department of Social Services.

D. The commissioner may (i) authorize the imposition of the sanction(s); (ii) authorize the imposition of a less severe sanction(s); or (iii) may deny the intent to impose a sanction(s) in the final order.

If the commissioner authorizes the imposition of the sanction(s), the time frame in which the facility must conform to the requirements of the sanction(s) shall be included in the final order. The applicant/licensee may appeal this decision to the appropriate circuit court under the provisions of § 63-1-212 of the Code of Virginia.

E. If the applicant/licensee wishes to appeal the imposition of a civil penalty or the appointment of a receiver, such appeal must be made to the appropriate court in the city or county where the facility is located.

A. Any applicant/licensee has the right to appeal the department's decision to impose an administrative sanction.

B. Appeals may be heard through an informal conference or a formal hearing.

C. If the applicant/licensee requests an appeal, he has the right to be represented by counsel at the conference/hearing.

D. An informal conference is the initial hearing of evidence in making a case decision, unless there is a waiver or agreement between the parties to go directly to a formal hearing.

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An informal conference shall be conducted by the department's designee.

E. In the event of an adverse decision following the informal conference, the applicant/licensee may request a formal hearing.

A formal hearing shall be conducted by an individual appointed from a roster of attorneys approved to serve as hearing officers. This roster is maintained by the Supreme Court of Virginia.

F. Once the informal conference or formal hearing is completed, the applicant/licensee shall receive written notice of a decision.

The department's designee shall render a decision within 90 days of the informal conference or from a later date agreed to by the applicant/licensee and the agency.

A hearing officer shall render findings and recommendations within 90 days from the date of the formal hearing or from a later date agreed to by the applicant/licensee and the agency.

The commissioner shall render a decision within 30 days from the date that the agency receives the hearing officer's recommendation.

G. If the commissioner authorizes the imposition of the sanction(s), the time frame in which the facility/agency must conform to the requirements of the sanction(s) shall be included in the final order. The applicant/licensee may appeal the decision to the appropriate circuit court under the provisions of § 63.1-312 of the Code of Virginia.

H. If the licensee wishes to appeal the imposition of a civil penalty or the appointment of a receiver, such appeal must be made to the appropriate court in the city or county where the facility is located.

ATTACHMENT I

An application form to operate a private child placing agency may be obtained from the following office:

Division of Licensing Programs
Department of Social Services
8007 Discovery Drive
Theater Row Building
730 East Broad Street
Richmond, Virginia 23220 23219
Telephone: (804) 662-0025 692-1782

An application form to operate a licensed facility, excluding a private child placing agency, may be obtained from the following offices:

OFFICE

Abingdon Out Station

Abingdon Licensing Office
Piedmont Region
190 Patton Street
Abingdon, VA 24210
Telephone: (703) 628-5171

AREA SERVED

Serving Counties of: Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Patrick, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe

Serving Cities of: Bristol, Galax, Norton

OFFICE

Central Regional Office
Wythe Building, Suite 300 130
1604 Santa Rosa Road
Richmond, VA 23229-5008
Telephone: (804) 662-9743

AREA SERVED

Serving Counties of: Amelia, Brunswick, Buckingham, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Westmoreland

Serving Cities of: Colonial Heights, Hopewell, Petersburg, Richmond, South Boston

OFFICE

Eastern Regional Office
Pembroke Office Park
Pembroke IV Office Building
Suite 300
Virginia Beach, VA 23462-5496
Telephone: (804) 473-2100

Serving Counties of: Accomack, Gloucester, Greenville, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, Surry, Sussex, York

Serving Cities of: Chesapeake, Emporia, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg

OFFICE

Fairfax Out Station
Fairfax Licensing Office
Northern Region
3959 Pender Drive
Fairfax, VA 22030
Telephone: (703) 359-6733

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Serving Counties of: Arlington, Loudoun, Fairfax

Serving Cities of: Alexandria, Fairfax, Falls Church

OFFICE

Northern Regional Office
320 Hospital Drive, Suite 23
Warrenton, VA 22186
Telephone: (703) 347-6300

Serving Counties of: Caroline, Culpeper, Fauquier, King George, Prince William, Rappahannock, Spotsylvania, Stafford

Serving Cities of: Fredericksburg, Manassas, Manassas Park

OFFICE

Piedmont Regional Office
Commonwealth of Virginia Building
210 Church Avenue, S.W., Suite 100
Roanoke, VA 24011-1779
Telephone: (703) 982-7920
Telephone: (703) 857-7920

Serving Counties of: Alleghany, Amherst, Appomattox, Bath, Bedford, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Henry, Montgomery, Nelson, Pittsylvania, Pulaski, Roanoke, Rockbridge

Serving Cities of: Bedford, Buena Vista, Clifton Forge, Covington, Danville, Lexington, Lynchburg, Martinsville, Radford, Roanoke, Salem

OFFICE

Verona Out Station
Verona Licensing Office
Northern Region
Post Office Box 350
Verona, VA 24482-0350
Telephone: (703) 332-8900

Serving Counties of: Albemarle, Augusta, Clarke, Frederick, Greene, Highland, Madison, Orange, Page, Rockingham, Shenandoah, Staunton, Warren

Serving Cities of: Charlottesville, Harrisonburg, Waynesboro, Winchester.

VA.R. Doc. No. R94-628; Filed March 1, 1994, 9:03 a.m.

Title of Regulation: VR 615-38-01 and 175-11-01, Standards and Regulations for Licensed Child Day Center Systems.

Statutory Authority: § 63.1-196.01:1 of the Code of Virginia.

Public Hearing Date: April 4, 1994 - 1 p.m.

Written comments may be submitted until May 21, 1994.

(See Calendar of Events section for additional information)

Basis: Section 63.1-196.01:1 of the Code of Virginia describes the responsibility of the Department of Social Services for the regulation of child day center systems. It also requires the State Board of Social Services and the Child Day-Care Council to jointly promulgate regulations pursuant to the Administrative Process Act to implement the provisions of this section.

Purpose: The purpose of this regulation is to provide standards for any entity who voluntarily applies to operate, manage or accredit as members of its system, 50 or more child day center sites in the Commonwealth.

Substance: The proposed regulation includes (i) requirements for eligibility and qualifications for becoming a child day center system; (ii) requirements for written policies and procedures for the operation of a child day center system; (iii) requirements for fiscal accountability; (iv) requirements regarding the relationship of the system with the licensing authority; (v) personnel requirements; (vi) requirements regarding services to member centers; and (vii) requirements regarding record keeping.

Issues: This regulation addresses the following issues which impact child day center systems licensed by the Department of Social Services:

1. Requirements for the system to become licensed;
2. The relationship between the system and the Department of Social Services; and
3. The relationship between the system and member centers.

Impact:

A. At present it appears that this regulation will have little impact. Two entities have indicated an interest in becoming licensed as a child day center system and have been involved in the development of this regulation.

B. Regulated entities: At present two public agencies, Fairfax County Office for Children and Virginia Beach Department of Parks and Recreation, have expressed an interest in having their before and after school child day centers licensed as child day center systems.

C. Projected costs to regulated entities: There will be minimal additional cost to entities who choose to operate a child day center system. Licensure as a system is voluntary and there should be no cost other than meeting child day center standards which are covered in another regulation.

D. Projected costs to the agency: There should be no

Proposed Regulations

additional costs to the Department of Social Services in licensing child day center systems.

E. Source of funds: Not applicable.

Summary:

This regulation contains the requirements and procedures that licensees and Department of Social Services staff must follow in the administration of child day center systems. Any person or organization may apply for a license to operate a child day center system if that person or organization operates or manages 50 or more child day centers.

The following areas are addressed in the regulation:

- 1. Requirements for eligibility and qualifications for becoming a child day center system;*
- 2. Requirements for written policies and procedures for the operation of a child day center system;*
- 3. Requirements for fiscal accountability;*
- 4. Requirements regarding the relationship of the system with the licensing authority;*
- 5. Personnel requirements;*
- 6. Requirements regarding services to member centers; and*
- 7. Requirements regarding record keeping.*

VR 615-38-01 and 175-11-01. Standards and Regulations for Licensed Child Day Center Systems.

PART I. DEFINITIONS.

§ 1.1. Definitions.

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

"Child" means any individual under 18 years of age.

"Child day 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 day center system" means any person who is voluntarily licensed as such who operates, manages, or accredits as members of its system, 50 or more child day center sites in the Commonwealth.

"Commissioner" means the Commissioner of the

Department of Social Services.

"Department" means the Virginia Department of Social Services.

"Department's representative" means an employee or designee of the Virginia Department of Social Services acting as the authorized agent of the commissioner.

"Division" means the Division of Licensing Programs.

"Good character and reputation" means findings have been established and knowledgeable, reasonable and objective people agree that the individual (i) maintains business or professional, family, and community relationships which are characterized by honesty, fairness, truthfulness, and dependability, and (ii) has a history or pattern of behavior that demonstrates the individual is suitable and able to administer a program for the care, supervision and protection of children. Relatives by blood or marriage and persons who are not knowledgeable of the individual, such as recent acquaintances, may not be considered objective references.

"Licensee" means any individual, partnership, association, public agency, or corporation to whom the license is issued.

"Monitor" or "monitoring visit" means to visit a licensed child day center to determine the center's compliance with the applicable regulations.

"Sponsor" means an individual, a partnership, an association, a public agency, a corporation or other legal entity in whom the ultimate authority and legal responsibility is vested for the administration and operation of a system subject to licensure.

"Staff" means administrative, activity, service, and volunteer personnel including the licensee when the licensee is an individual who works in the facility.

PART II. ORGANIZATION AND ADMINISTRATION.

§ 2.1. Eligibility and qualifications.

A. A child day center system may be sponsored by a single individual, partnership, association, corporation, or public entity, provided the individual or organization meets the eligibility requirements.

B. A corporation sponsoring a child day center system shall maintain its corporate status in accordance with Virginia law.

C. Such corporation shall be organized and empowered for the purpose of operating and maintaining a child day center system. Corporations not organized and empowered solely to operate a child day center system shall provide for such operations in their charters.

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D. A child day center system sponsored by an association or corporation shall be controlled by a governing board that shall fulfill the duties of the licensee.

E. If a child day center system is sponsored by an individual or partnership, the individual or partnership shall be the licensee and shall comply with the responsibilities specified for a governing board.

§ 2.2. Governing board; composition; meetings; responsibilities.

A. The membership of the governing board shall be based on the size and purpose of the child day center system as well as the services to be offered by the system.

It shall be large enough and be composed of members who will:

1. Be representative of the variety of interests served by the system;
2. Possess experience appropriate to the services offered by the system; and
3. Be representative of the geographical area served by the system.

At minimum, the governing board shall be composed of three members unless there are fewer than three shareholders, at which time the number of members may equal the number of shareholders.

B. The governing board shall meet not less than quarterly. Minutes of all meetings shall be recorded and retained in a permanent file at the office of the child day center system. Copies of minutes shall be made available to the department's representative upon request.

C. The responsibilities of the governing board shall include, but not be limited to:

1. Establishing written bylaws for the association or corporation.
2. Establishing written policies and procedures under which the child day center system will operate.
3. Ensuring that the child day center system functions according to its defined purpose and within the scope of services to be offered.
4. Ensuring compliance with the minimum standards for licensed child day center systems.
5. Maintaining a budgetary and financial system which assures that a sound financial structure is maintained.
6. Appointing a qualified director to whom it

delegates, in writing, the authority and responsibility for administrative direction and management of the child day center system in accordance with established policies.

7. Providing a written organizational chart which indicates the organizational elements of the system, the personnel positions within each organizational element and the lines of authority and communication within the child day center system. The chart shall be kept current.

8. Reviewing, at least annually, the program of the child day center system. This review shall include an examination of:

- a. The number, size and quality of service offered by child day centers that are members of the system;
- b. Problems encountered in the operation of the system;
- c. Consistency of services provided within the framework of the stated purpose and objectives of the system;
- d. Changes required in the focus of the system's program; and
- e. The adequacy of the record keeping system.

9. Determining, based on the annual review required by subdivision 8 of this subsection, the following:

- a. Requirements for additional staff training;
- b. Requirements for changes in staff;
- c. Requirements for changes in the focus of the program and services offered by the system.

10. Developing and implementing plans to respond to the needs identified in subdivision 9 of this subsection.

§ 2.3. Policies and procedures.

A. Written policies and procedures shall be prepared for the operation of the child day center system. These policies and procedures shall relate to:

1. Personnel policies (see § 3.2 A).
2. Services to member centers, including:
 - a. Criteria for approving child day centers as members of the system;
 - b. Technical assistance and consultation to child day center operators; and

c. Inspection, supervision, monitoring and evaluation of system members.

B. A copy of all policies and procedures shall be made available to the department's representative upon request.

§ 2.4. Finances; fiscal accountability; internal financial procedures.

A. The child day center system shall have a plan of financing which assures sufficient funds to operate in accordance with its stated purpose, objectives and the services to be provided.

A new system shall, as part of its initial application for licensure, (i) submit a plan of financing for the first year of operation and (ii) document funds or credit available for the first year of operation.

The application for license renewal shall include evidence of financial responsibility. At minimum, this evidence shall include (i) a current balance sheet showing a statement of current assets and current liabilities; and (ii) a budget for the next year of operation.

B. There shall be a system of financial record keeping that is consistent with generally accepted accounting principles, showing separation of the system's accounts from all other records.

There shall be a written policy for the collection and disbursement of funds.

§ 2.5. Relationship to the licensing authority.

A. The child day center system shall submit to the department such reasonable reports and information that it may require.

B. The system's books and records shall be made available for inspection by the department's representative upon request.

C. The licensee, governing board or its official representative shall notify the department when any major change is anticipated in the program, administrative structure, or in the services provided. When such a change occurs which was not anticipated, such notification shall be provided no later than 10 days following the change. The department shall also be notified within five working days whenever a new director is employed by the child day center system.

PART III. PERSONNEL.

Article 1.

General Qualifications and Personnel Policies.

§ 3.1. General qualifications.

All staff shall be:

- 1. Of good character and reputation;*
- 2. Capable of carrying out assigned responsibilities;*
- 3. Willing and able to accept training and supervision;*
- 4. Emotionally stable with an understanding of problems and needs of children; and*
- 5. Able to understand and apply the minimum standards in this regulation and in the Minimum Standards for Licensed Child Day Centers (VR 175-08-01 and VR 175-09-01) which relate to their respective responsibilities.*

§ 3.2. Personnel policies.

A. There shall be a written description for each staff position. This job description shall include:

- 1. The job title;*
- 2. The functions assigned to the position, including authority and position; and*
- 3. Education or experience requirements for the position.*

B. A copy of the job description shall be made available to each person assigned to the position at the time of employment.

Article 2. System Staff.

§ 3.3. Composition and number of staff; functions.

A. The composition and number of staff employed by the system shall be sufficient to ensure:

- 1. Compliance with these standards; and*
- 2. The uninterrupted and timely provision of all services included in the system program to members of the system.*

B. The number and composition of staff needed shall be determined by:

- 1. The scope of the program and services offered by the system;*
- 2. The number of centers that are members of the system and their geographic location in relation to the system office;*
- 3. The number of children in care in centers that are members of the system;*

Proposed Regulations

4. The experience and capabilities of the staff; and

5. The total responsibilities assigned to each staff member and the time required to effectively carry out these responsibilities. Total responsibilities are those relating to inspection, supervision, monitoring, providing technical assistance to operators and staff of member centers, and administrative tasks and supervisory responsibilities.

C. Qualified staff who meet the applicable qualifications established in § 3.4 of these standards shall be designated to perform each of the following functions:

1. Day-to-day management, administration and supervision of the system operations;
2. Technical assistance and consultation to the staff of member centers; and
3. Inspection, supervision and monitoring of centers that are members of the system.

§ 3.4. Staff qualifications; director; staff responsible for inspections.

A. There shall be one full-time staff member designated as the director of the system who shall be responsible for the overall day-to-day management, administration and supervision of system operations. In the case of an individual proprietorship or partnership, the director may be the licensee.

An individual assuming the duties of the director shall have:

1. A master's degree in early childhood education, child development, social work, education or psychology from an accredited college or university, or the equivalent as determined and approved by the department, plus three years of experience in any one or more of these fields, including two years of experience in a supervisory, administrative or management position; or
2. A bachelor's degree in early childhood education, social work, psychology or education from an accredited four-year college or university, or the equivalent as determined and approved by the department, plus four years experience in any of these fields, including two years experience in a supervisory, administrative or management position.

B. Responsibilities for inspections of member centers shall be assigned to a designated staff member or members. These responsibilities shall include:

1. Developing and providing technical assistance and consultation to the operators and staff of child day centers that are members of the system.

2. Making initial, renewal, and monitoring inspections of child day centers that are members of the system for the purpose of approving centers in accordance with Minimum Standards for Child Day Centers (VR 175-08-01 and VR 175-09-01) and assuring continued compliance with these requirements.

Staff members designated to perform inspection services shall have:

1. A bachelor's degree in early childhood education, child development, social work, psychology or education from an accredited four-year college or university or the equivalent as determined and approved by the department; or
2. An associate degree, or equivalent, in Human Services, Community and Social Service, or Educational Services or their equivalent as determined and approved by the department, from an accredited community college or four-year college or university and two years supervised experience working in a child day center, residential children's facility, nursery school, family day home, or similar program providing care to children.

§ 3.5. Staff development.

A. Provision shall be made for orientation for all staff. This shall be documented and recorded in the employee's record.

B. Prior to assuming their duties, new employees shall be given orientation and training in at least the following areas:

1. The objectives and philosophy of the system;
2. The services offered by the system;
3. Confidential treatment of personal information;
4. The policies and procedures that are applicable their specific positions and assigned duties and responsibilities; and
5. The standards as they apply to the individual position.

C. A written plan of training with specific well-defined objectives shall be prepared and implemented annually for each employee. A copy of this plan shall be filed in the employee's record and shall be made available to the department's representative upon request.

D. Attendance at conferences, seminars, workshops, institutes and academic courses related to the employee's duties and responsibilities shall be encouraged.

Article 3.
Volunteers.

Proposed Regulations

§ 3.6. Volunteers.

A. Any volunteers used shall:

1. Meet the qualifications of the applicable position;
2. Be subject to laws and regulations governing the confidential treatment of personal information; and
3. Have clearly defined duties and responsibilities.

B. The system shall establish written requirements for the screening and selection of volunteers.

C. Duties and responsibilities of all volunteers shall be clearly defined in writing and differentiated from those persons regularly filling staff positions.

D. At least one staff person shall be assigned the responsibility for selection, orientation, training, scheduling, and supervision of volunteers.

E. The system shall not be dependent upon the use of volunteers to ensure the provision of services to member centers.

PART IV. SERVICES TO MEMBER CENTERS.

§ 4.1. Policies and agreements.

A. The system shall establish and maintain written policies regarding:

1. The roles, rights and responsibilities of the system in the supervision and approval of member centers;
2. The roles, rights and responsibilities of child day centers that are members of the system;
3. Procedures for consultation to prospective member centers;
4. Orientation of operators and staff of member centers;
5. Procedures for handling inquiries and applications from potential member centers;
6. Conducting a full inspection of each member center to determine compliance with regulations for child day centers before making a recommendation to the commissioner regarding initial issuance or renewal of a license;
7. Conducting at least one inspection of each member center in each calendar year in which a full inspection for initial licensure or renewal of a license is not conducted to determine compliance with regulations for child day centers;

8. Procedures to be followed to assure that all areas of noncompliance with approval requirements have been corrected;

9. Receipt, investigation and resolution of complaints involving a member center's noncompliance with the system's operational standards;

10. Establishing an appeal process for member centers affected by the system's decisions;

11. Making recommendations to the commissioner regarding variances requested by member centers.

B. The system shall have a written agreement with each member center which specifies at least the following:

1. The center's agreement with the system's policies in the areas identified in subsection A of this section;
2. The financial agreement between the system and the member center; and
3. The rights and responsibilities of the system to monitor, inspect, evaluate and approve a member center.

§ 4.2. Responsibilities of the commissioner.

A. Upon receipt of a recommendation from the system regarding issuance of a license, the department's representative shall evaluate the recommendation for licensure and make a decision regarding issuance.

B. The department's representative shall conduct at least one unannounced inspection of each member center each calendar year to ensure compliance with regulations for child day centers.

C. The department's representative will investigate reports that the system or member centers are out of compliance with applicable state laws and regulations. The department's representative and the system shall conduct joint investigations of reports that member centers are out of compliance with applicable state laws and regulations.

D. The department will provide training and consultation to child day center systems regarding the system's application of child day center regulations.

E. The department will receive recommendations from systems regarding variances requested by member centers and will act on these requests.

F. The department will consider the imposition of sanctions on any member center based upon the recommendation of the system or upon the department's findings.

PART V.

Proposed Regulations

RECORDS.

§ 5.1. General requirements.

A. Any forms used for record keeping shall contain at minimum the information specified in these standards or in child day center standards. Model forms, which may be copied, will be supplied by the department upon request.

B. If any model form developed by the department is not used, the substitute form shall be approved by the department.

C. All records must be kept in a locked area.

D. The licensee shall have the responsibility for assuring that all records are treated confidentially. All records shall be made available to the department's representative for inspection.

§ 5.2. Written policies and procedures.

A. The written policies and procedures described in this section shall be developed by the system. Copies shall be maintained in a permanent file within the system office. Those so identified shall also be permanently filed in child day centers that are members of the system.

B. Policies and procedures pertaining to operation and management of the system shall include:

1. Written policies and procedures which address services to be provided to member centers; and

2. Written bylaws when the child day center system is sponsored by an association or corporation.

C. Policies and procedures pertaining to staff employed in the system office shall include:

1. A written job description for each staff position which exists in the system office. Each job description shall address the areas identified in § 3.2 A of these standards;

2. Written requirements for the screening and selection of volunteers if volunteers are used; and

3. Written duties and responsibilities of volunteers.

D. Policies and procedures pertaining to member centers shall include:

1. Policies and procedures which describe the selection, evaluation, approval and general management of member centers;

2. Policies for suspension or termination of a member center; and

3. Copies of the policies and procedures listed in this

section shall be provided to each center that is a member of the system.

§ 5.3. System records.

A. The records described in this section shall be maintained by the system in a permanent file within the system office. Those so identified shall also be provided to each centers that is a member of the system.

B. Records on the system shall include:

1. An organizational chart (See § 2.2 C 7 of these standards); and

2. Financial records which are consistent with generally accepted accounting principles and reflect a separation of system accounts from all other records (See § 2.4 B of these standards).

C. Records on centers that are members of the system shall be maintained as follows:

1. An individual record shall be maintained on each center that is a member of the system.

2. This record shall be established when the center applies for membership in the system and shall be maintained in the system office.

3. The record shall be kept current.

4. The complete record shall be retained for at least two years after the center withdraws or is terminated as a member of the system.

5. Each record shall contain at a minimum the following information and documentation:

a. A copy of the agreement with the member center as required by § 4.1 B 1 of these standards. A copy of this agreement shall be on file in the member center; and

b. A copy of each compliance study completed on the center and required by § 4.1 A 6 of these standards.

D. Records of persons employed in the system office shall be maintained as follows:

1. An individual record shall be maintained on each staff member employed in the system office.

2. This record shall be established when the individual is employed and shall be retained for at least two years after employment is terminated.

3. The record shall be kept current.

4. Each record shall contain at minimum the

following personal and social data:

- a. Name;*
- b. Birthdate;*
- c. Current address and telephone number;*
- d. Position and date employed;*
- e. Last previous employment;*
- f. Copies of at least three references or notations of verbal references reflecting the date of the reference, the source and the content;*
- g. Previous experience or training;*
- h. Social security number;*
- i. Name and telephone number of person to contact in an emergency;*
- j. Notations of formal training received following employment; and*
- k. Date and reason for termination of employment.*

VA.R. Doc. No. R94-629; Filed March 1, 1994, 9:02 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see information page.

Symbol Key

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

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Title of Regulation: VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.

Statutory Authority: §§ 22.1-16, 22.1-302 and 22.1-304 of the Code of Virginia.

Effective Date: April 20, 1994.

Summary:

The regulations 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 contract provisions. Revised contract prototypes with a listing 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 regulations are new regulations that are intended to replace VR 270-01-0042, which will be repealed. The 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 regulations are in two parts: The preamble describes 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.

Preamble:

Local school boards are authorized to employ professional personnel to assist in their vested duty of supervision of schools in their localities. Employment contracts embody the agreements between the local school board and the employee, and such agreements between the parties must include the essential elements of a contract and requirements of state law, and represent the duties, responsibilities, rights and benefits of both parties. Conditions and practices that are unique to a particular school board should be set forth as additional terms or covenants in a contract, while preserving the integrity of the contract and the requirements of law.

It is the intent of these regulations to set forth the requirements provided by law for contractual agreements for school boards and employees. In addition, these regulations provide a structure for uniform hiring procedures to be used by local school boards to ensure that their employment needs are met and that employees are able to take advantage of opportunities for professional growth. Further, local school boards may continue or adopt policies that meet or exceed the minimum standards set forth in these regulations.

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 Brenda F. Briggs or Charles W. Finley, Department of Education, Division of Compliance, 101 North 14th Street, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2750 or (804) 225-2747, Fax (804) 225-2831. There may be a charge for copies.

VR 270-01-0042:1. Regulations Governing the Employment of Professional Personnel.

PART I. CONTRACTUAL AGREEMENTS.

Article 1. Definitions.

Final Regulations

§ 1.1. Definitions.

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

"Annual contract" means a contract between the employee and the local school board which sets forth the terms and conditions of employment for one school year.

"Board" means the Virginia Board of Education which has general supervision of the public school system.

"Breach of contract" means, for the purpose of Phase Three of these regulations, a teacher failing to honor a contract for the next school year without formal release from that contract from the local board. It does not include dismissal for cause.

"Coaching contract" means a separate contract between the employee and the local school board which includes responsibilities for an athletic coaching assignment.

"Continuing contract" means a contract between the employee who has satisfied the probationary term of service and the local school board.

"Current employer" means the local school board with whom the teacher is currently under contract.

"Next school year" means the school year immediately following the current contract year.

"Principal" means a person (i) who is regularly employed full time as a principal or assistant principal, and (ii) who holds a valid teaching license issued by the board.

"Prospective employer" means the division in which application for employment is made.

"Supervisor" means a person (i) who is regularly employed full time in a supervisory capacity, and (ii) who is required by the board to hold a license to be employed in that position.

"Teacher" means a person (i) who is regularly employed full time as a teacher, visiting teacher/school social worker, guidance counselor, or librarian, and (ii) who holds a valid teaching license.

Article 2. Contracts, Generally.

§ 1.2. Contractual period defined.

The local school board shall define the length of the contract period for each employee. A 10-month contractual period is defined to include 200 days as follows:

1. 180 teaching days or 990 instructional hours

(minimum required by law);

2. Ten days for activities such as teaching, planning for the opening of school, evaluation, completing records and reports incident to the closing of each semester or school year, committee assignments, and conferences;

3. Ten days for a continuation of activities under subdivisions 1 and 2 of this section, and such other activities as may be assigned or approved by the local school board.

§ 1.3. Contract to be in writing.

The contract must be in writing. The local school board may utilize prototypes of contract forms provided by the board, as shown in Appendix A, or may choose to develop their own contracts, but in so doing must ensure that the essential elements set forth in Appendix B of these regulations are included.

Article 3. Annual Contracts, Probationary Period.

§ 1.4. Length of the probationary term.

A probationary term of [full-time] employment under an annual contract for three years in the same school division is required prior to the issuance of a continuing contract. When continuing contract status has been attained in a school division in the state, another probationary period need not be served in any other school division unless a probationary period not exceeding one year is made a part of the contract of employment.

§ 1.5. Calculating term for first year of teaching.

For the purpose of calculating the three years of service required to attain continuing contract status, at least 160 contractual teaching days during the school year shall be deemed the equivalent of one year in the first year of service by the teacher.

§ 1.6. Probationary period for principal or supervisor.

A person employed as a principal or supervisor, including a person who has previously achieved continuing contract status as a teacher, shall serve three years in such position in the same school division before acquiring continuing contract status as a principal or supervisor.

§ 1.7. Probationary period when employee separates from service.

If a teacher, principal, or supervisor separates from service during his probationary period and does not return to service in the same school division by the beginning of the year following the year of separation, such person shall be required to begin a new probationary period.

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§ 1.8. Effect of service outside the Virginia system.

Teaching service outside of the Virginia public school system shall not be counted as meeting in whole or in part the required probationary term.

Article 4. Continuing Contracts.

§ 1.9. Eligibility for continuing contract.

Only persons regularly employed full time by a school board who hold a valid license as teachers, principals, or supervisors shall be eligible for continuing contract status.

§ 1.10. Continuing contract status when employee separates from service.

If a teacher who has attained continuing contract status separates from service and does not return to teaching in Virginia public schools for a period longer than two years, such person shall be required to begin a new three-year probationary period.

Article 5. Coaching Contracts.

§ 1.11. Contract to be separate and apart from annual or continuing contract.

The coaching contract shall be separate and apart from the annual or continuing contract and termination of the contract shall not constitute cause for the termination of the annual or continuing contract.

§ 1.12. Termination notice required.

The coaching contract shall require the party intending to terminate the contract to give reasonable notice to the other party prior to the effective date of the termination.

PART II. UNIFORM HIRING OF TEACHERS.

Article 1. Purpose.

§ 2.1. Purpose of a uniform hiring process.

The goal for regulations for uniform hiring of teachers is to establish a calendar for hiring that is compatible with the dates budgets are completed by local governing bodies. The calendar dates, which are embodied in the three-phase employment process, establish minimum timeframes to accommodate the local hiring process, offer local flexibility in including contract terms to cover unique needs and practices of the locality, and offer professional mobility for teachers.

§ 2.2. Phase One of the three-phase employment process

A. Phase One covers employment sought for the next school year and covers the period from the beginning of the current school year to the close of business on April 14 of the current school year. The end of the phase on April 14 corresponds to the provisions of § 22.1-304 of the Code of Virginia allowing written notice of noncontinuation of contract by April 15. If April 14 ends on a Saturday, Sunday, or legal holiday, the end of Phase One will be the last administrative working day prior to the Saturday, Sunday, or legal holiday.

B. During Phase One, a teacher may apply and be interviewed for employment for the next school year in other school divisions without notice to or permission from the division where he is currently employed.

C. During Phase One, a teacher accepting employment in another division for the next school year must resign by giving written notice to the current employer. The notice should specify that the resignation is applicable for the next school year only.

§ 2.3. Phase Two of the three-phase employment process.

A. Phase Two begins on April 15 and ends on May 31 or the date the teacher contract is final, whichever is later. The contract is final when the date of signature and, at a minimum, the salary terms are finally known.

B. During Phase Two, teachers, whether probationary or continuing contract, may seek employment and file applications for the next school year with other school divisions. Teachers may seek employment during this phase without notification to the current employer.

C. During Phase Two, the prospective employer may offer a contract without proof of release from contract from the current employer. The teacher must obtain a written release from the contract with the current employer prior to signing a contract with the prospective employer. Releases should be liberally granted during this phase.

§ 2.4. Phase Three of the three-phase employment process.

A. Phase Three begins on June 1 or the date the salary is finally set by the local school board, whichever occurs later. In Phase Three, the contract is a firm and binding obligation on the teacher and the school division.

B. During Phase Three, teachers may seek employment and file applications for the next school year with other school divisions; however, a prospective employer should not offer a contract to any teacher during Phase Three until the teacher has secured a written release from the contract with the current employer, and a teacher should not accept a contract until a written release has been secured.

C. A current employer, at its discretion, may release a teacher from the contract. The employer should release

teachers for good cause.

D. [Good cause may include, but is not limited to, the relocation of the spouse, medical and family emergencies, and position advancement, as opposed to salary advancement. Good cause is determined by the local school board. It should reflect a consideration of all the factors affecting both the employee and the school board. Factors in determining good cause may include the employee's reason for leaving, contractual terms and agreements, and the overall effect of the resignation on the employee and the school division.]

E. In the event that a local board declines to grant a request for release from a contract on the grounds of insufficient or unjustifiable cause, and the teacher breaches or expresses an intent to breach the contract, the current employer may, within 30 days of the breach, file a petition with the Board of Education setting forth all the facts in the case and requesting that the teacher's license be suspended for the next school year or apply other remedies appropriate under law or contract.

VAR. Doc. No. R94-667; Filed March 2, 1994, 11:17 a.m.

APPENDIX A

ANNUAL FORM CONTRACT WITH PROFESSIONAL PERSONNEL

THIS ARTICLE OF AGREEMENT, between the SCHOOL BOARD OF _____
(county, city, or town)

Commonwealth of Virginia, ("School Board") and _____ ("Employee").

The School Board agrees to employ and the employee agrees to accept such employment in the position of _____

subject to the authority of the School Board,
(administrator, supervisor, principal, teacher, librarian or other instructional staff)

under the supervision and direction of the division superintendent of schools, and agrees to the following conditions:

1. The employee: (check one)
 - holds a valid Virginia license issued by the Board of Education
 - has completed the requirements and has filed a complete application for a Virginia license
 - is eligible for a Virginia license and will file a complete application within 90 days of employment
2. The services to be performed hereunder shall begin on _____, 19 __, and continue thereafter as prescribed by the school board.
3. The employee shall perform such pertinent duties during the period of this contract as are deemed necessary by the school board and superintendent for the efficient and successful operation of the school system.
4. The employee shall comply with all school laws, Board of Education regulations, and all regulations made by the school board in accordance with law and Board of Education regulations, and shall make promptly and accurately all reports required by the division superintendent of schools.
5. The employee agrees to abide by the provisions of the Constitution of Virginia and the Constitution of the United States.
6. The division superintendent shall have authority to assign employees to their respective positions in the school wherein they have been placed by the school board and may, with the approval of the school board, reassign any employee to any school within the division during the term of this contract; provided no change or reassignment shall adversely affect the salary of the employee under this contract.
7. The reassignments of administrative or supervisory personnel to a teaching position shall be in accordance with Section 22.1-294 of the Code of Virginia (1950), as amended.
8. Before the superintendent recommends to the school board the nonrenewal of the contract of an employee who has not achieved continuing contract status, the superintendent shall notify the employee of the proposed recommendation in accordance with Section 22.1-304 of the Code.
9. The school board, upon recommendation of the division superintendent, reserves the right to dismiss, suspend, or place on probation the employee, paying for services rendered in accordance with this agreement to date of dismissal.
10. In case schools are closed temporarily as a result of an epidemic or for other necessary cause, the said board may require such loss of time to be made up within the school term or may extend the school term.
11. This contract shall not operate to prevent discontinuance of employment as provided or allowed by law.
12. The employee may request that the school board release the employee from the terms of this contract by giving the school board two weeks notice in writing and setting forth therein the reason considered just cause for resignation. In the event the school board declines to grant the request for release, and the

employee breaches the contract, the school board may pursue remedies prescribed by the Board of Education or as described elsewhere in this contract consistent with law.

13. The school board agrees to pay employee for the duration of this contract _____ payable:
 - (a) in _____ installments for services rendered, payable by the first day of each calendar month or as soon thereafter as possible.
 - or
 - (b) in accordance with schedule under "Special Covenants."
14. The school board shall not be obligated to the salary terms above unless and until sufficient funds are provided to fulfill the obligations of the school board by the appropriating body; provided, further, that the school board shall give the employee written notice of such approval or disapproval, as the case may be, within seven (7) days of such action.
15. In the event this contract is terminated by mutual consent prior to the end of the contract period, payment will be made for services rendered on a daily basis to be determined by dividing the salary stipulated in this contract by the number of days officially covered under the provisions of this contract.
16. The school board shall deduct monthly from the salary due the employee the computed amount due the Virginia Retirement System (including State-supported group insurance), and applicable state and federal statutes.
17. SPECIAL COVENANTS:

This contract shall at all times be subject to any and all laws, regulations, and policies existing during the term of the contract relating to conditions of employment such as leave, salaries, and length of school terms. Failure of the employee to fulfill this contract shall constitute sufficient grounds for the termination of the contract by the school board.

The parties agree to the terms of this contract effective this _____ day of _____ 19 ____.

Employee (L.S.)

Chairman of the Board (L.S.)

Clerk of the Board (L.S.)

CONTINUING FORM CONTRACT WITH PROFESSIONAL PERSONNEL

State law provides for continuing contracts with local school boards for members of the instructional staff who are qualified by the terms of said law, and/or regulations of the Board of Education; therefore, this article of agreement between the school board of _____ (county, city, or town) _____ Commonwealth of Virginia,

(the "School Board"), and _____ (Employee).

The school board agrees to employ and the employee agrees to accept such employment in the position of _____ subject to the authority of the school board, under the _____ (administrator, supervisor, principal, teacher, librarian or other instructional staff)

supervision and direction of the division superintendent of schools, and agrees to the following conditions:

- 1. The employee agrees to abide by the provisions of the Constitution of Virginia and the Constitution of the United States.
2. The services to be performed hereunder shall begin on _____ 19____ and continue thereafter as prescribed by the school board.
3. During the term of this contract, the school board agrees to pay the employee an annual salary consistent with provisions of state law, plus any additional salary, but not less than the local scale, as may be determined by the school board in the local salary schedule as duly adopted from time to time; provided, however, that the school board shall not be obligated hereunder unless and until sufficient funds to meet the obligations of the school board hereunder have been approved by the appropriating body; provided, further, that the school board shall give the employee written notice of such approval or disapproval, as the case may be, within seven (7) days of such action.
4. The employee accepts this appointment and agrees to perform such pertinent duties during the period of this contract as are deemed necessary by the school board and superintendent for the efficient and successful operation of the school system.
5. The division superintendent shall have authority to assign employees to their respective positions in the school wherein they have been placed by the school board, and may, with the approval of the school board, reassign any employee to any school within the division during the term of this contract; provided no change or reassignment shall adversely affect the salary of the employee under this contract.
6. The reassignments of administrative or supervisory personnel to a teaching position shall be in accordance with Section 22.1-294 of the Code of Virginia (1950), as amended.
7. The employee shall comply with all school laws, Board of Education regulations, and all rules and regulations made by the school board in accordance with law and Board of Education regulations, and shall make promptly and accurately all reports required by the division superintendent of schools.
8. The length of the school term and the annual period of service shall be fixed by the school board in accordance with law.
9. This contract of employment shall remain in full force and effect from year to year, subject to all the provisions herein set forth, unless modified by mutual consent in writing by the parties to this contract. The employee may be dismissed, suspended, or placed on probation as provided by law. The school board, upon recommendation of the division superintendent, reserves the right to dismiss, suspend, or place on probation the employee, paying for services rendered, in accordance with this agreement to date of dismissal. In case schools are closed temporarily as a result of an epidemic or for other necessary cause, the school board may require such loss of time to be made up within the school term or may extend the school term. In the event this contract is terminated, payment will be made for services actually rendered on a daily rate basis.

- 10. This contract shall not operate to prevent discontinuance of a position as provided by law.
11. This contract shall be null and void and of no further force or effect and be terminated if, at any point during the term of this contract, the employee does not hold a valid license, as defined in regulations of the Board of Education.
12. The employee may be granted a leave of absence as provided by law, Board of Education regulations, and/or the policies of the local school board.
13. The school board, shall deduct monthly from the salary due the employee the computed amount due, the Virginia Supplemental Retirement System (including State-supported group insurance), and other applicable state and federal statutes.

14. SPECIAL COVENANTS:

This contract shall at all times be subject to any and all laws, regulations, and policies now existing or enacted during the term of the contract relating to conditions of employment such as leave, salaries, and length of school terms. Failure of the employee to fulfill this contract shall constitute sufficient grounds for the termination of the contract by the school board.

The parties agree to the terms of this contract effective this _____ day of _____, 19____
_____ (L.S.)
Chairman of the Board
_____ (L.S.)
Employee
_____ (L.S.)
Clerk of the Board

ATHLETIC COACHING CONTRACT WITH SCHOOL PERSONNEL

APPENDIX B

AGREEMENT, between the SCHOOL BOARD OF _____ ("School Board") and
 _____ (county, city, or town)

_____ ("Coach").

The school board and the coach agree that the coach will perform the following athletic coaching assignment _____ subject to the
(football, basketball, baseball, track, or other specified athletic activity)

authority of the School Board, under the supervision and direction of the superintendent or designee, subject to the Code of Virginia and subject to the following conditions:

1. The coach shall perform such pertinent duties during the period of this assignment as are deemed necessary by the school board and the superintendent or designee for the successful and efficient operation of the school system.
2. The coach shall comply with all applicable laws, Virginia Board of Education regulations, school board policies, and regulations of the superintendent now or hereafter in effect.
3. This agreement may be terminated by either party with or without cause by providing reasonable notice in writing to the other party. Such reasonable notice may be set forth in the Special Covenants below.
4. The school board agrees to pay the coach \$ _____ as monetary compensation for the duration of this agreement, payable in accordance with established payroll procedures. The coach agrees and acknowledges that this employment does not qualify as service toward continuing contract eligibility, does not constitute teaching experience, and does not create any rights of any type in favor of the coach other than the compensation referred to herein.
5. This agreement is for an athletic coaching assignment from _____, 19 _____ - to _____, 19 _____, commencing _____, 19 _____.
(month/day) (month/day)
6. The school board shall deduct from the monetary compensation all deductions required by law.
7. Termination of this agreement by either party shall not, in itself, constitute cause for termination of any separate teaching contract between the coach and the school board.
8. SPECIAL COVENANTS:

The parties agree to the terms of this contract effective this _____ day of _____, 19 _____.

 Coach

 Chairman of the School Board

 Clerk of the School Board

LISTING OF ESSENTIAL CONTRACT ELEMENTS

INTRODUCTORY STATEMENT

This list of essential contract elements, pending approval by the Office of the Attorney General, would satisfy the statutory requirement of a "form prescribed by the Board of Education" as required by §22.1-302 of the Code of Virginia (1950) as amended. The text of the essential elements can be used by certain local school divisions who prefer to develop contracts specific to their circumstances or situations. This list of essential elements is provided as an alternative to the formal prototypes available. These elements, after review and approval by the Office of the Attorney General, and compliance with the requirements of the Administrative Process Act, will be incorporated into the appropriate section of Board regulations.

ANNUAL CONTRACTS

Any annual contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum, the following provisions:

- A statement identifying the names and titles of the parties to the contract.
- A statement of the licensure requirements for the position or options thereto.
- A statement of the beginning date of service, the term, and the effective date of the contract.
- A statement of the duties to be performed under the contract.
- A statement (or statements) of expectations of the employee with regard to compliance with local, state, and/or federal statutes, regulations and consultational provisions.
- A statement (or statements) of the provisions concerning assignment, reassignment, termination, suspension, probation, or resignation of the employee, and mutual termination of the contract.
- A statement of the penalties for the employee's failure to comply with the terms of the contract.
- A statement identifying the school term.
- A statement of the conditions under which the school term and/or contract may be extended.
- A statement of the amount of compensation due the employee and the method of payment.
- A statement of special covenants mutually agreed upon by the employer and employee which form a basis for the contract.

CONTINUING CONTRACTS

Any continuing contract for professional personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include, at a minimum the following provisions:

- All of the provisions required for the annual contract.
- A statement explaining the continuing nature of the contract.

COACHING CONTRACTS

Any athletic coaching contract with school personnel shall, to the maximum extent possible, be written in clear and concise language easily understood by all parties, and include the following provisions:

- A statement identifying the names and titles of the parties to the contract.
- A statement of the duties to be performed under the contract.
- A statement of the amount of compensation due the employee and the method of payment.
- A statement (or statements) of expectations of the employee with regard to compliance with local, state, and/or federal statutes, regulations and constitutional provisions.
- A statement setting forth conditions for termination of the contract.
- A statement identifying the limitations on the use of the experience toward length of service, substitution for teaching experience and rights in favor of the coach.
- A statement of the beginning date of service, the term, and the effective date of the contract.
- A statement of special covenants mutually agreed upon by the employer and employee which form a basis for the contract.

Final Regulations

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program (REPEALED).

Statutory Authority: § 32.1-12 of the Code of Virginia.

Effective Date: April 20, 1994.

Summary:

Rules and Regulations Governing the Maternal and Neonatal High-Risk Hospitalization Program 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.

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: Rosanne Kolesar, Health Programs Analyst, Department of Health, 1500 East Main Street, Room 214, Richmond, VA 23219, telephone (804) 786-1983.

V.A.R. Doc. No. R94-658; Filed March 2, 1994, 10:37 a.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

REGISTRAR'S NOTICE: The Board of Housing and Community Development is suspending the regulatory process on (i) § 310.7 Family Day Homes and § 1010.3 Buildings with One Exit of the regulation entitled, "VR 394-01-21, Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993" and (ii) § 100.6.3 Family Day Homes, § 100.7.3 Family Day Homes and § 108.6 Family Day Homes of the regulation entitled, "VR 394-01-22, Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/1993." The regulatory process is being suspended beginning February 14, 1994, for at least 30 days to solicit additional public comment on these sections. These regulations were published in final form in 10:10 V.A.R. 2672-2712 February 7, 1994, to become effective April 1, 1994. The regulatory process is suspended only on the above-referenced sections. The remainder of VR 394-01-21 and VR 394-01-22 will become effective on April 1, 1994. The regulations are reprinted below in their entirety without the sections that have been suspended to show the regulations as they will

become effective April 1, 1994.

The sections on which the regulatory process has been suspended read as follows:

VR 394-01-21 - Section 310.7

(B) ~~Change~~ Add new Section 309.4 [~~310.5.2~~ 310.7] to read as follows:

[~~310.5.2~~ 310.7.] Family day home. A family day home as defined by § 63.1-195 of the Code of Virginia shall be classified as Use Group R-3 [or R-4 and shall comply with Section 1010.3 for Use Group R-3].

VR 394-01-21 - Section 1010.3

[A. Add exception to Section 1010.3(2) to read as follows:

Exception: Family day homes as defined in § 63.1-195 of the Code of Virginia shall be provided with at least one exterior exit door from each floor used for the care of children.]

VR 394-01-22 - Section 100.6.3

[100.6.3. Family day homes: Pre-USBC family day homes as defined in § 63.1-195 of the Code of Virginia shall comply with the applicable provisions of Section 108.0.]

VR 394-01-22 - Section 100.7.3

[100.7.3. Family day homes: Pre-USBC family day homes as defined in § 63.1-195 of the Code of Virginia shall comply with the applicable provisions of Section 108.0.]

VR 394-01-22 - Section 108.6

[108.6. Family day homes: Family day homes as defined in § 63.1-195 of the Code of Virginia shall be provided with at least one exterior exit door from each floor used for the care of children.]

A public hearing on the above-referenced sections will be held on Monday, April 18, 1994, at 7 p.m. in the General Assembly Building, House Room D, 910 Capitol Square, Richmond, Virginia. Public comment on the above-referenced sections may be submitted until April 25, 1994, to George Rickman, Regulatory Coordinator, Department of Housing and Community Development, Jackson Center, 501 North Second Street, Richmond, Virginia 23219-1321, telephone (804) 371-7170.

* * * * *

REPRINT

Title of Regulation: VR 394-01-21. Virginia Uniform

Statewide Building Code, Volume I - New Construction Code/ ~~1990~~ 1993 .

Statutory Authority: §§ 36-98 and 36-102 of the Code of Virginia.

Effective Date: April 1, 1994.

Summary:

The amendments update the existing regulation to reflect the requirements of the 1993 Edition of the National Model Building Codes and Standards.

VR 394-01-21. Virginia Uniform Statewide Building Code, Volume I - New Construction Code/1993.

ARTICLE CHAPTER 1.

ADOPTION, ADMINISTRATION AND ENFORCEMENT.

**SECTION 100.0.
GENERAL.**

100.1. Title. These regulations shall be known as Volume I - New Construction Code of the ~~1990~~ 1993 edition of the Virginia Uniform Statewide Building Code. Except as otherwise indicated, USBC, and code, as used herein, shall mean Volume I - New Construction Code of the ~~1990~~ 1993 edition of the Virginia Uniform Statewide Building Code.

Note: See Volume II - Building Maintenance Code for maintenance regulations applying to existing buildings.

100.2. Authority. The USBC is adopted under authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6 [; (§ 36-97 et seq.) of] Title 36 [; of the] Code of Virginia.

100.3. Purpose and scope. The purpose of the USBC is to ensure safety to life and property from all hazards incident to building design, construction, use, repair, removal or demolition. Buildings shall be permitted to be constructed at the least possible cost consistent with nationally recognized standards for health, safety, energy conservation, water conservation, adequate egress facilities, sanitary equipment, light and ventilation, fire safety, structural strength, and physically handicapped and aged accessibility. As provided in the Uniform Statewide Building Code Law, Chapter 6 [; (§ 36-97 et seq.) of] Title 36 [; of the] Code of Virginia, the USBC supersedes the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies, relating to any construction, reconstruction, alterations, conversion, repair or use of buildings and installation of equipment therein. The USBC does not supersede zoning ordinances or other land use controls that do not effect the manner of construction or materials to be used in the construction, alteration or repair of a building.

100.4. Adoption. The ~~1990~~ 1993 edition of the USBC was adopted by order of the Board of Housing and Community Development on [~~November 10, 1990~~ [~~15 December 13~~] , 1993 . This order was prepared according to requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.5. Effective date. The ~~1990~~ 1993 edition of the USBC shall become effective on [~~March~~ April] 1, ~~1991~~ 1994 .

100.6. Application. The USBC shall apply to all buildings, structures and associated equipment which are constructed, altered, repaired or converted in use after [~~March~~ April] 1, ~~1991~~ 1994 . Buildings and structures that were designed within one year prior to [~~March~~ April] 1, ~~1991~~ 1994 , shall be subject to the previous edition of the code provided that the permit application is submitted by [~~March~~ April] 1, ~~1992~~ 1995 . This provision shall also apply to subsequent amendments to this edition of the code based on the effective date of the amendments.

Exception: Buildings and structures for which a permit application is submitted after February 1, 1992, shall comply with applicable provisions of Section 512.0.

100.6.1. Industrialized buildings and manufactured homes. Industrialized buildings registered under the Virginia Industrialized Building Safety Law and manufactured homes labeled under the Federal Manufactured Housing Construction and Safety Standards shall be exempt from the USBC; however, the building official shall be responsible for issuing permits, inspecting the site work and installation of industrialized buildings and manufactured homes, and issuing certificates of occupancy for such buildings when all work is completed satisfactorily.

100.7. Exemptions. The following buildings, structures and equipment are exempted from the requirements of the USBC:

1. Farm buildings and structures not used for residential purposes; however, such buildings and structures lying within a flood plain or in a mudslide-prone area shall be subject to the applicable flood proofing or mudslide regulations.

2. Equipment installed by a provider of publicly regulated utility service and electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights; however, the buildings, including their service equipment, housing such public service agencies shall be subject to the USBC.

3. Manufacturing and processing machines and [equipment; however, the buildings, including the following] service equipment [; housing such

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machinery and equipment shall be subject to the USBC. All machines and equipment not supplied by the manufacturer of the manufacturing and processing machines and equipment as an integral part of the said machines and equipment are subject to the USBC.]

[Note: It is intended that such items as sprinkler systems, piping systems, motor control centers, power panels, busways, feeders, branch circuits, service equipment, disconnect switches, starters, combination starters and HVAC systems which are not an integral part of the manufacturing and processing machines and equipment not provided by the maker of the manufacturing and process machines and equipment for integral use with said machines and equipment shall be subject to the USBC.

- a. All electrical equipment connected after the last disconnecting means.
- b. All plumbing appurtenance connected after the last shutoff valve or backflow protection device.
- c. All plumbing appurtenance connected before the equipment drain trap.
- d. All gas piping and equipment connected after the outlet shutoff valve.]

4. Parking lots and sidewalks; however, parking lots and sidewalks which form part of an accessible route, as defined by [~~ANSI A117.1 - 1986~~ the Americans With Disabilities Act Accessibility Guidelines] shall comply with the requirements of [~~Section~~] 512.0 Chapter 11 .

5. Recreational equipment such as swing sets, sliding boards, climbing bars, jungle gyms, skateboard ramps, and similar equipment when such equipment is a residential accessory use not regulated by the Virginia Amusement Device Regulations.

SECTION 101.0. REFERENCE STANDARDS AND AMENDMENTS.

101.1. Adoption of model codes and standards. The following model building codes and all portions of other model codes and standards that are referenced in this Code are hereby adopted and incorporated in the USBC. Where differences occur between provisions of the USBC and the referenced model codes or standards, the provisions of the USBC shall apply. Where differences occur between the technical provisions of the model codes and their referenced standards, the provisions of the model code shall apply.

The referenced model codes are:

THE BOCA NATIONAL BUILDING CODE/ 1990 1993

EDITION

(also referred to herein as BOCA Code)

Published by:

Building Officials and Code Administrators
International, Inc.
4051 West Flossmoor Road
Country Club Hills, Illinois 60478-5795
Telephone No. (708) 799-2300

Note: The following major subsidiary model codes are among those included by reference as part of the BOCA National Building Code/ 1990 1993 Edition:

BOCA National Plumbing Code/ 1990 1993 Edition

BOCA National Mechanical Code/ 1990 1993 Edition

NFPA National Electrical Code/ 1990 1993 Edition

The permit applicant shall have the option to select as an acceptable alternative for detached one and two family dwellings and one family townhouses not more than three stories in height and their accessory structures the following standard:

CABO ONE AND TWO FAMILY DWELLING CODE/ 1989 1992 EDITION and 1990 1993 Amendments (also referred to herein as One and Two Family Dwelling Code)

Jointly published by:

Building Officials and Code Administrators
International, Inc.

Southern Building Code Congress International, Inc.
and International Conference of Building Officials.

101.2. General administrative and enforcement amendments to referenced codes. All requirements of the referenced model codes that relate to fees, permits, certification of fitness, unsafe notices, unsafe conditions, maintenance, disputes, condemnation, inspections, existing buildings, existing structures, certification of compliance, approval of plans and specifications and other procedural, administrative and enforcement matters are deleted and replaced by the provisions of ~~Article~~ Chapter 1 of the USBC.

Note: The purpose of this provision is to eliminate overlap, conflict and duplication by providing a single standard for administration and enforcement of the USBC.

101.3. Amendments to the BOCA Code. The amendments noted in Addendum 1 of the USBC shall be made to the specified [~~articles chapters~~] and sections of the BOCA National Building Code/ 1990 1993 Edition for use as part of the USBC.

101.4. Amendments to the One and Two Family Dwelling Code. The amendments noted in Addendum 2 of the USBC shall be made to the indicated chapters and sections of the One and Two Family Dwelling Code/ 1989 1992 Edition and 1990 1993 Amendments for use as part of the USBC.

SECTION 102.0. LOCAL BUILDING DEPARTMENTS.

102.1. Responsibility of local governments. Enforcement of the USBC Volume I shall be the responsibility of the local building department in accordance with § 36-105 of the Code of Virginia. Whenever a local government does not have such a building department, it shall enter into an agreement with another local government or with some other agency, or a state agency approved by the Virginia Department of Housing and Community Development for such enforcement. The local building department and its employees may be designated by such names or titles as the local government considers appropriate.

102.2. Building official. Each local building department shall have an executive official in charge, hereinafter referred to as the building official.

102.2.1. Appointment. The building official shall be appointed in a manner selected by the local government having jurisdiction. After appointment, he shall not be removed from office except for cause after having been afforded a full opportunity to be heard on specific and relevant charges by and before the appointing authority. The local government shall notify the ~~Office of Professional Services Training and Certification Office~~ within 30 days of the appointment or release of the building official. ~~The building official must complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment. A Virginia certified building official shall complete an orientation course approved by the Department of Housing and Community Development within 90 days after appointment. A building official not certified by Virginia shall attend the core program of the Virginia Building Code Academy, or an approved regional academy, within 90 days after appointment.~~

102.2.2. Qualifications. The building official shall have at least five years of building experience as a licensed professional engineer or architect, building inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The building official shall have general knowledge of sound engineering practice in respect to the design and construction of buildings, the basic principles of fire prevention, the accepted requirements for means of egress and the installation of elevators and other service equipment necessary for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification

requirements.

102.2.3. Certification. The building official shall be certified in accordance with Part III of the Virginia Certification Standards for ~~Building and Amusement Device Inspectors, Blasters and Tradesmen~~ [(VR 394-01-2)] within three years after the date of employment.

Exception: An individual employed as the building official in any locality in Virginia prior to April 1, 1983, shall be exempt from certification while employed as the building official in that jurisdiction. This exemption shall not apply to subsequent employment as the building official in another jurisdiction.

102.3. Qualifications of technical assistants. A technical assistant shall have at least three years of experience in general building construction. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.3.1. Certification of technical assistants. Any person employed by, or under contract to, a local governing body for determining compliance with the USBC shall be certified in [~~their~~ his] trade field within three years after the date of employment in accordance with Part III of the Virginia Certification Standards for ~~Building and Amusement Device Inspectors, Blasters and Tradesmen~~ [(VR 394-01-2)].

Exception: An individual employed as the building, electrical, plumbing, mechanical, fire protection systems inspector or plans examiner in Virginia prior to March 1, 1988, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment as a technical assistant in another jurisdiction.

102.4. Relief from personal responsibility. The local building department personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The building official or subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by that officer or employee in the discharge of official duties and under the provisions of the USBC may be defended by the department's legal

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representative.

102.5. Control of conflict of interests. The minimum standards of conduct for building officials and technical assistants shall be in accordance with the provisions of the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

SECTION 103.0. DUTIES AND POWERS OF THE BUILDING OFFICIAL.

103.1. General. The building official shall enforce the provisions of the USBC as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

103.2. Modifications. The building official may grant modifications to any of the provisions of the USBC upon application by the owner or the owner's agent provided the spirit and intent of the USBC are observed and public health, welfare and safety are assured.

Note: The current editions of many nationally recognized model codes and standards are referenced by the Uniform Statewide Building Code. Future amendments do not automatically become part of the USBC; however, the building official should give consideration to such amendments in deciding whether a requested modification should be granted. See State Building Code Technical Review Board Interpretation Number 64/81 issued November 16, 1984.

103.2.1. Supporting data. The building official may require the application to include architectural and engineering plans and specifications that include the seal of a professional engineer or architect. The building official may also require and consider a statement from a professional engineer, architect or other competent person as to the equivalency of the proposed modification.

103.2.2. Records. The application for modification and the final decision of the building official shall be in writing and shall be officially recorded with the copy of the certificate of use and occupancy in the permanent records of the local building department.

103.3. Delegation of duties and powers. The building official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the USBC.

103.4. Department records. The building official shall keep records of applications received, permits and certificates issued, reports of inspections, notices and orders issued and such other matters as directed by the local government. A copy of the certificate of use and occupancy and a copy of any modification of the USBC issued by the building official shall be retained in the

official records, as long as the building to which it relates remains in existence. Other records may be disposed of in accordance with the provisions of the Virginia Public Records Act [(§ 42.1-76 et seq. of the Code of Virginia)], (i) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, or (ii) after three years in the case of all other buildings.

SECTION 104.0. FEES.

104.1. Fees. Fees may be levied by the local governing body in order to defray the cost of enforcement and appeals in accordance with § 36-105 of the Code of Virginia.

104.2. When payable. A permit shall not be issued until the fees prescribed by the local government have been paid to the authorized agency of the jurisdiction, nor shall an amendment to a permit be approved until any required additional fee has been paid. The local government may authorize delayed payment of fees.

104.3. Fee schedule. The local government shall establish a fee schedule. The schedule shall incorporate unit rates which may be based on square footage, cubic footage, cost of construction or other appropriate criteria.

104.4. Refunds. In the case of a revocation of a permit or abandonment or discontinuance of a building project, the local government shall provide fee refunds for the portion of the work which was not completed.

104.5. Fee levy. Local governing bodies shall charge each permit applicant an additional 1.0% [~~(levy)~~] of the total fee for each building permit. This additional 1.0% levy shall be transmitted quarterly to the Department of Housing and Community Development and shall be used to support the training programs of the Virginia Building Code Academy.

Exception: Localities which maintain training academies that are accredited by the Department of Housing and Community Development may retain such levy.

104.5.1. Levy adjustment. The Board of Housing and Community Development shall annually review the percentage of this levy and may adjust the percentage not to exceed 1.0%. The annual review shall include a study of the operating costs for the previous year's Building Code Academy, the current balance of the levy collected, and the operational budget projected for the next year of the Building Code Academy.

104.5.2. Levy cap. Annual collections of this levy which exceed \$500,000, or any unobligated fund balance greater than one-third of that fiscal year's collections shall be credited against the levy to be collected in the next fiscal year.

SECTION 105.0. APPLICATION FOR CONSTRUCTION PERMIT.

105.1. When permit is required. Written application shall be made to the building official when a construction permit is required. A permit shall be issued by the building official before any of the following actions subject to the USBC may be commenced:

1. Constructing, enlarging, altering, repairing, or demolishing a building or structure.
2. Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities, ventilation or sanitary provisions.
3. Installing or altering any equipment which is regulated by this code.
4. Removing or disturbing any asbestos containing materials during demolition, alteration, renovation of or additions to buildings or structures.

Exceptions:

1. Ordinary repairs which do not involve any violation of the USBC shall be exempt from this provision. Ordinary repairs shall not include the removal, addition or relocation of any wall or partition, or the removal or cutting of any structural beam or bearing support, or the removal, addition or relocation of any parts of a building affecting the means of egress or exit requirements. Ordinary repairs shall not include the removal, disturbance, encapsulation, or enclosure of any asbestos containing material. Ordinary repairs shall not include additions, alterations, replacement or relocation of the plumbing, mechanical, or electrical systems, or other work affecting public health or general safety. The term "ordinary repairs" shall mean the replacement of the following materials with like materials:

- a. Painting.
- b. Roofing when not exceeding 100 square feet of roof area.
- c. Glass when not located within specific hazardous locations as defined in Section ~~2203.2~~ 2405.2 of the BOCA Code and all glass repairs in Use Group R-3 and R-4 buildings.
- d. Doors, except those in fire-rated wall assemblies or exitways.
- e. Floor coverings and porch flooring.
- f. Repairs to plaster, interior tile work, and other wall coverings.

g. Cabinets installed in residential occupancies.

h. Wiring and equipment operating at less than 50 volts.

2. A permit is not required to install wiring and equipment which operates at less than 50 volts provided the installation is not located in a noncombustible plenum, or is not penetrating a fire-resistance rated assembly.

3. Detached utility sheds 150 square feet or less in area and eight feet six inches or less in wall height when accessory to any Use Group ~~R-3 or R-4 buildings~~ building except Use Groups H and F.

105.1.1. Authorization of work. The building official may authorize work to commence pending receipt of written application.

105.2. Who may apply for a permit. Application for a permit shall be made by the owner or lessee of the building or agent of either, or by the licensed professional engineer, architect, contractor or subcontractor (or their respective agents) employed in connection with the proposed work. If the application is made by a professional engineer, architect, contractor or subcontractor (or any of their respective agents), the building official shall verify that the applicant is either licensed to practice in Virginia, or is exempt from licensing under the Code of Virginia. The full names and addresses of the owner, lessee and the applicant, and of the responsible officers if the owner or lessee is a corporate body, shall be stated in the application. The building official shall accept and process permit applications through the mail. The building official shall not require the permit applicant to appear in person.

105.3. Form of application. The application for a permit shall be submitted on forms supplied by the building official.

105.4. Description of work. The application shall contain a general description of the proposed work, its location, the use of all parts of the building, and of all portions of the site not covered by the building, and such additional information as may be required by the building official.

105.5. Plans and specifications. The application for the permit shall be accompanied by not less than two copies of specifications and of plans drawn to scale, with sufficient clarity and dimensional detail to show the nature and character of the work to be performed. Such plans and specifications shall include the seal and signature of the architect or engineer under whose supervision they were prepared, or if exempt under the provisions of state law, shall include the name, address, and occupation of the individual who prepared them. When quality of materials is essential for conformity to the USBC, specific information shall be given to establish such quality. In cases where such plans and specifications are exempt

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under state law, the building official may require that they include the signature and seal of a professional engineer or architect.

Exceptions:

1. The building official may waive the requirement for filing plans and specifications when the work involved is of a minor nature.
2. Detailed plans may be waived by the building official for buildings in Use Group R-4, provided specifications and outline plans are submitted which satisfactorily indicate compliance with the USBC.

Note: Information on the types of construction exempted from the requirement for a professional engineer's or architect's seal and signature is included in ~~Addenda 4 and 10~~ *Addendum 9*.

105.5.1. Site plan. The application shall also contain a site plan showing to scale the size and location of all the proposed new construction and all existing buildings on the site, distances from lot lines, the established street grades and the proposed finished grades. The building official may require that the application contain the elevation of the lowest floor of the building. It shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and construction that are to remain on the site. In the case of alterations, renovations, repairs and installation of new equipment, the building official may waive submission of the site plan or any parts thereof.

105.6. Plans review. The building official shall examine all plans and applications for permits within a reasonable time after filing. If the application or the plans do not conform to the requirements of the USBC, the building official shall reject such application in writing, stating the reasons for rejection. [~~Plans~~ *Any plan*] review comments requiring [:] additional information, engineering details, or stating reasons for rejection of plans and specifications, shall be made in writing either by letter or a plans review form from the building official's office, in addition to notations or markings on the plans.

105.7. Approved plans. The building official shall stamp "Approved" or provide an endorsement in writing on both sets of approved plans and specifications. One set of such approved plans shall be retained by the building official. The other set shall be kept at the building site, open to inspection by the building official at all reasonable times.

105.8. Approval of partial plans. The building official may issue a permit for the construction of foundations or any other part of a building before the plans and specifications for the entire building have been submitted, provided adequate information and detailed statements have been filed indicating compliance with the pertinent requirements

of the USBC. The holder of such permit for the foundations or other part of a building shall proceed with construction operations at the holder's risk, and without assurance that a permit for the entire building will be granted.

105.9. Engineering details. The building official may require adequate details of structural, mechanical, plumbing, and electrical work to be filed, including computations, stress diagrams and other essential technical data. All engineering plans and computations shall include the signature of the professional engineer or architect responsible for the design. ~~Plans for~~ *For* buildings more than two stories in height, ~~the building official may require that plans shall~~ indicate where floor penetrations will be made for pipes, wires, conduits, and other components of the electrical, mechanical and plumbing systems [~~when required~~]. The plans shall show the material and methods for protecting such openings so as to maintain the required structural integrity, fire-resistance ratings, and firestopping affected by such penetrations.

105.10. Asbestos inspection in buildings to be renovated or demolished. A local building department shall not issue a building permit allowing a building for which an initial building permit was issued before January 1, 1978, to be renovated or demolished until the local building department receives a certification from the owner or ~~the owner's~~ *his* agent that the ~~affected portions of the building has~~ *have* been inspected for the presence of asbestos by an individual licensed to perform such inspections pursuant to § 54.1-503; in accordance with standards developed pursuant to subdivision 1 of subsection A of § 2-1-526.14-1 [~~of the Code of Virginia~~] and that no asbestos-containing materials were found or that appropriate response actions will be undertaken in accordance with the requirements of the Clean Air Act National Emission Standard for the Hazardous Air Pollutant (NESHAPS) (40 CFR 61, Subpart M) ~~the management standards for asbestos-containing materials prepared by the Department of General Services in accordance with § 2-1-526.14-2 of the Code of Virginia~~, and the asbestos worker protection requirements established by the U.S. Occupational Safety and Health Administration for construction workers (29 CFR 1926.58). *Local educational agencies that are subject to the requirements established by the Environmental Protection Agency under the Asbestos Hazard Emergency Response Act (AHERA) shall also certify compliance with 40 CFR 763 and subsequent amendments thereto.*

Exceptions:

1. Single family dwellings.
2. Residential housing with four or fewer units.
3. Farm buildings.
4. Buildings less than 3,500 square feet in area.
5. Buildings with no central heating system.

6. Public utilities required by law to give notification to the Commonwealth of Virginia and to the United States Environmental Protection Agency prior to removing asbestos in connection with the renovation or demolition of a building.

The provisions of this section shall not apply to single-family dwellings or residential housing with four or fewer units unless the renovation or demolition of such buildings is for commercial or public development purposes. The provisions of this section shall not apply if the combined amount of regulated asbestos-containing material involved in the renovation or demolition is less than 260 linear feet on pipes or less than 160 square feet on other facility components or less than 35 cubic feet of facility components where the length or area could not be measured previously.

105.10.1. Replacement of roofing, floorcovering, or siding materials. To meet the inspection requirements of Section 105.10 except with respect to schools, asbestos inspection of renovation projects consisting only of repair or replacement of roofing, floorcovering, or siding materials may be satisfied by:

1. A statement that the materials to be repaired or replaced are assumed to contain asbestos and that asbestos installation, removal, or encapsulation will be accomplished by a licensed asbestos contractor or a licensed asbestos roofing, flooring, siding contractor; or
2. A certification by the owner that sampling of the material to be renovated was accomplished by an RFS inspector as defined in § 54.1-500 of the Code of Virginia and analysis of the sample showed no asbestos to be present.

105.10.2. Reoccupancy. An abatement area shall not be reoccupied until the building official receives certification from the owner that the response actions have been completed and final clearances have been measured. The final clearance levels for reoccupancy of the abatement area shall be 0.01 or fewer asbestos fibers per cubic centimeter if determined by Phase Contrast Microscopy analysis (PCM) or 70 or fewer structures per square millimeter if determined by Transmission Electron Microscopy analysis (TEM).

105.11. Amendments to application. Amendments to plans, specifications or other records accompanying the application for permit may be filed at any time before completion of the work for which the permit is issued. Such amendments shall be considered part of the original application and shall be filed as such.

105.12. Time limitation of application. An application for a permit for any proposed work shall be considered to have been abandoned six months after notification by the building official that the application is defective unless the applicant has diligently sought to resolve any problems that are delaying issuance of the permit; except that for

reasonable cause, the building official may grant one or more extensions of time.

SECTION 106.0. PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES.

106.1. Special professional services; when required. The building official may require representation by a professional engineer or architect for buildings and structures which are subject to special inspections as required by Section 1308.0 1705.0 .

106.2. Attendant fees and costs. All fees and costs related to the performance of special professional services shall be the responsibility of the building owner.

SECTION 107.0. APPROVAL OF MATERIALS AND EQUIPMENT.

107.1. Approval of materials; basis of approval. The building official shall require that sufficient technical data be submitted to substantiate the proposed use of any material, equipment, device or assembly. If it is determined that the evidence submitted is satisfactory proof of performance for the use intended, the building official may approve its use subject to the requirements of the USBC. In determining whether any material, equipment, device or assembly complies with the USBC, the building official shall approve items listed by nationally recognized research, testing and product certification organizations independent testing laboratories or may consider the recommendations of engineers and architects certified licensed in this state.

107.2. Used materials and equipment. Used materials, equipment and devices may be used provided they have been reconditioned, tested or examined and found to be in good and proper working condition and approved for use by the building official.

107.3. Approved materials and equipment. All materials, equipment, devices and assemblies approved for use by the building official shall be constructed and installed in accordance with the conditions of such approval.

SECTION 108.0. INTERAGENCY COORDINATION - FUNCTIONAL DESIGN.

108.1. Functional design approval. Pursuant to § 36-98 of the Code of Virginia, certain state agencies have statutory authority to approve functional design and operation of building related activities not covered by the USBC. The building official may refuse to issue a permit until the applicant has supplied certificates of functional design approval from the appropriate state agency or agencies. State agencies with functional design approval are listed in Addendum 5 4 . For purposes of coordination, the local governing body may require reports to the building official by other departments as a condition for issuance of a

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building permit or certificate of use and occupancy. Such reports shall be based upon review of the plans or inspection of the project as determined by the local governing body.

SECTION 109.0. CONSTRUCTION PERMITS.

109.1. Issuance of permits. If the building official is satisfied that the proposed work conforms to the requirements of the USBC and all applicable laws and ordinances, a permit shall be issued as soon as practicable. The building official may authorize work to commence prior to the issuance of the permit.

109.2. Signature on permit. The signature of the building official or authorized representative shall be attached to every permit.

109.3. Separate or combined permits. Permits for two or more buildings on the same lot may be combined. Permits for the installation of equipment such as plumbing, electrical or mechanical systems may be combined with the structural permit or separate permits may be required for the installation of each system. Separate permits may also be required for special construction considered appropriate by the local government.

109.4. Annual permit. The building official may issue an annual permit for alterations to an already approved equipment installation.

109.4.1. Annual permit records. The person to whom an annual permit is issued shall keep a detailed record of all alterations to an approved equipment installation made under such annual permit. Such records shall be accessible to the building official at all times or shall be filed with the building official when so requested.

109.5. Posting of permit. A copy of the building permit shall be posted on the construction site for public inspection until the work is completed.

109.6. Previous permits. No changes shall be required in the plans, construction or designated use of a building for which a permit has been properly issued under a previous edition of the USBC, provided the permit has not been revoked or suspended in accordance with Section 109.7 or 109.8.

109.7. Revocation of permits. The building official may revoke a permit or approval issued under the provisions of the USBC in case of any false statement or misrepresentation of fact in the application or on the plans on which the permit or approval was based.

109.8. Suspension of permit. Any permit issued shall become invalid if the authorized work on the site authorized by the permit is not commenced within six months after issuance of the permit, or if the authorized work on the site is suspended or abandoned for a period

of six months after the time of commencing the work; however, permits issued for building equipment such as plumbing, electrical and mechanical work shall not become invalid if the building permit is still in effect. *It shall be the responsibility of the permit applicant to prove to the building official that work has not been suspended or abandoned.* Upon written request the building official may grant one or more extensions of time not to exceed six months per extension.

109.9. Compliance with code. The permit shall be a license to proceed with the work in accordance with the application and plans for which the permit has been issued and any approved amendments thereto and shall not be construed as authority to omit or amend any of the provisions of the USBC, except by modification pursuant to Section 103.2.

SECTION 110.0. INSPECTIONS.

110.1. Right of entry. The building official may inspect buildings for the purpose of enforcing the USBC in accordance with the authority granted by § 36-105 of the Code of Virginia. The building official and assistants shall carry proper credentials of office when inspecting buildings and premises in the performance of duties under the USBC.

Note: Section 36-105 of the Code of Virginia provides, pursuant to enforcement of the USBC, that any building may be inspected at any time before completion. It also permits local governments to provide for the reinspection of buildings.

110.2. Preliminary inspection. Before issuing a permit, the building official may examine all buildings and sites for which an application has been filed for a permit to construct, enlarge, alter, repair, remove, demolish or change the use thereof.

110.3. Minimum inspections. Inspections shall include but are not limited to the following:

1. The bottom of footing trenches after all reinforcement steel is set and before any concrete is placed.
2. The installation of piling. The building official may require the installation of pile foundations be supervised by the owner's professional engineer or architect or by such professional service as approved by the building official.
3. Reinforced concrete beams, or columns and slabs after all reinforcing is set and before any concrete is placed.
4. Structural framing and fastenings prior to covering with concealing materials.

5. All electrical, mechanical and plumbing work prior to installation of any concealing materials.

6. Required insulating materials before covering with any materials.

7. Upon completion of the building, and before issuance of the certificate of use and occupancy, a final inspection shall be made to ensure that any violations have been corrected and all work conforms with the USBC.

110.3.1. Special inspections. Special inspections required by this code shall be limited to only those required by Section ~~1308.0~~ 1705.0 .

110.4. Notification by permit holder. It shall be the responsibility of the permit holder or the permit holder's representative to notify the building official when the stages of construction are reached that require an inspection under Section 110.3 and to confirm continuation of work per Section 109.8 or for other inspections as directed by the building official. All ladders, scaffolds and test equipment required to complete an inspection or test shall be provided by the property owner, permit holder or their representative.

110.5. Inspections to be prompt. The building official shall respond to inspection requests without unreasonable delay. The building official shall approve the work [*in writing*] or give written notice of defective work to the permit holder or the agent in charge of the work. Such defects shall be corrected and reinspected before any work proceeds that would conceal them.

Note: A reasonable response time should normally not exceed two working days.

110.6. Approved inspection agencies. The building official may accept reports from individuals or inspection agencies which satisfy qualifications and reliability requirements, and shall accept such reports under circumstances where the building official is unable to make the inspection by the end of the following working day. Inspection reports shall be in writing and shall be certified by the individual inspector or by the responsible officer when the report is from an agency. An identifying label or stamp permanently affixed to the product indicating that factory inspection has been made shall be accepted instead of the written inspection report, if the intent or meaning of such identifying label or stamp is properly substantiated.

110.7. In-plant inspections. When required by the provisions of this code, materials or assemblies shall be inspected at the point of manufacture or fabrication. The building official shall require the submittal of an evaluation report of each prefabricated assembly, indicating the complete details of the assembly, including a description of the assembly and its components, the basis upon which the assembly is being evaluated, test results, and other data as necessary for the building official to determine

conformance with this code.

110.8. Coordination with other agencies. The building official shall cooperate with fire, health and other state and local agencies having related maintenance, inspection or functional design responsibilities, and shall coordinate required inspections for new construction with the local fire official whenever the inspection involves provisions of the BOCA National Fire Prevention Code.

SECTION 111.0. WORKMANSHIP.

111.1. General. All construction work shall be performed and completed so as to secure the results intended by the USBC.

SECTION 112.0. VIOLATIONS.

112.1. Code violations prohibited. No person, firm or corporation shall construct, alter, extend, repair, remove, demolish or use any building or equipment regulated by the USBC, or cause same to be done, in conflict with or in violation of any of the provisions of the USBC.

112.2. Notice of violation. The building official shall serve a notice of violation on the person responsible for the construction, alteration, extension, repair, removal, demolition or use of a building in violation of the provisions of the USBC, or in violation of plans and specifications approved thereunder, or in violation of a permit or certificate issued under the provisions of the USBC. Such order shall reference the code section that serves as the basis for the violation and direct the discontinuance and abatement of the violation. Such notice of violation shall be in writing and be served by either delivering a copy of the notice to such [~~persons~~ person] by mail to the last known address, [~~delivered~~ delivering the notice] in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

112.3. Prosecution of violation. If the notice of violation is not complied with, the building official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation or to require the removal or termination of the use of the building in violation of the provisions of the USBC. Compliance with a notice of violation notwithstanding, the building official may request legal proceedings be instituted for prosecution when a person, firm or corporation is served with three or more notices of violation within one calendar year for failure to obtain a required construction permit prior to commencement of work regulated under the USBC.

112.4. Violation penalties. Violations are a misdemeanor in accordance with § 36-106 of the Code of Virginia.

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Violators, upon conviction, may be punished by a fine of not more than \$2,500.

112.5. Abatement of violation. Conviction of a violation of the USBC shall not preclude the institution of appropriate legal action to require correction or abatement of the violation or to prevent other violations or recurring violations of the USBC relating to construction and use of the building or premises.

SECTION 113.0. STOP WORK ORDER.

113.1. Notice to owner. When the building official finds that work on any building is being executed contrary to the provisions of the USBC or in a manner endangering the general public, an order may be issued to stop such work immediately. The stop work order shall be in writing. It shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work. It shall state the conditions under which work may be resumed. No work covered by a stop work order shall be continued after issuance, except under the conditions stated in the order.

113.2. Application of order limited. The stop work order shall apply only to the work that was being executed contrary to the USBC or in a manner endangering the general public, provided other work in the area would not cause concealment of the work for which the stop work order was issued.

SECTION 114.0. POSTING BUILDINGS.

114.1. Use group and form of sign. Prior to its use, every building designed for Use Groups B, F, H, M or S shall be posted by the owner with a sign approved by the building official. It shall be securely fastened to the building in a readily visible place. It shall state the use group, the live load, the occupancy load, and the date of posting.

114.2. Occupant load in places of assembly. Every room constituting a place of assembly or education shall have the approved occupant load of the room posted on an approved sign in a conspicuous place, near the main exit from the room. Signs shall be durable, legible, and maintained by the owner or the owner's agent. Rooms or spaces which have multiple-use capabilities shall be posted for all such uses.

114.3. Street numbers. Each structure to which a street number has been assigned shall have the number displayed so as to be readable from the public right of way.

SECTION 115.0. CERTIFICATE OF USE AND OCCUPANCY.

115.1. When required. Any building or structure constructed under this code shall not be used until a

certificate of use and occupancy has been issued by the building official. *Final inspection approval(s) shall serve as the certificate of use or occupancy for any addition or alteration to a building or structure which already has a valid certificate of use or occupancy.*

115.2. Temporary use and occupancy. The holder of a permit may request the building official to issue a temporary certificate of use and occupancy for a building, or part thereof, before the entire work covered by the permit has been completed. The temporary certificate of use and occupancy may be issued provided the building official determines that such portion or portions may be occupied safely prior to full completion of the building.

115.3. Contents of certificate. When a building is entitled thereto, the building official shall issue a certificate of use and occupancy. The certificate shall state the purpose for which the building may be used in its several parts. When the certificate is issued, the building shall be deemed to be in compliance with the USBC. The certificate of use and occupancy shall specify the use group, the type of construction, the occupancy load in the building and all parts thereof, the edition of the USBC under which the building permit was issued, and any special stipulations, conditions and modifications.

115.4. Changes in use and occupancy. A building hereafter changed from one use group to another, in whole or in part, whether or not a certificate of use and occupancy has heretofore been issued, shall not be used until a certificate for the changed use group has been issued.

115.5. Existing buildings. A building constructed prior to the USBC shall not be prevented from continued use. The building official shall issue a certificate of use and occupancy upon written request from the owner or the owner's agent, provided there are no violations of Volume II of the USBC and the use of the building has not been changed.

115.6. Suspension or revocation of certificate of occupancy. The building official may suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

SECTION 116.0. LOCAL BOARD OF BUILDING CODE APPEALS.

116.1. Local board of building code appeals. Each local government shall have a local board of building code appeals to act on applications for appeals as required by § 36-105 of the Code of Virginia; or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a State agency approved by the Virginia Department of Housing and Community Development, to act on appeals.

116.1.1. Separate divisions. The local board of building code appeals may be divided into separate divisions to consider appeals relating to separate areas of regulation of

the USBC. When separate divisions are created, the scope of each shall be clearly stated. The local board of appeals may permit appeals from a division to be submitted directly to the State Building Code Technical Review Board. Each division shall comply with the membership requirements and all other requirements of the USBC relating to the local board of building code appeals.

116.2. Membership. The local board of building code appeals shall consist of at least five members appointed by the local government. Members may be reappointed.

Note: In order to provide continuity, it is recommended that the terms of local board members be staggered so that less than half of the terms expire in any one year.

116.2.1. Qualifications of board members. Board members shall be selected by the local government on the basis of their ability to render fair and competent decisions regarding application of the code, and shall, to the extent possible, represent different occupational or professional fields. Employees or officials of the local government appointing the board shall not serve as board members.

Note: At least one member should be an experienced builder. At least one other member should be a licensed professional engineer or architect.

116.3. Officers of the board. The board shall select one of its members to serve as chairman. The building official shall designate an employee from the department to serve as secretary to the board. The secretary shall keep a detailed record of all proceedings on file in the local building department.

116.4. Alternates and absence of members. The local government may appoint alternate members who may sit on the board in the absence of any regular members of the board and, while sitting on the board, shall have the full power and authority of the regular member. A procedure shall be established for use of alternate members in case of absence of regular members.

116.5. Control of conflict of interest. A member of the board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared the plans or specifications, or has any personal interest.

116.6. Notice of meeting. The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

116.7. Application for appeal. The owner of a building, the owner's agent, or any other person, firm or corporation directly involved in the design or construction of a building or structure may appeal to the local building code board of appeals within 90 calendar days from a decision of the building official when it is claimed that:

1. The building official has refused to grant a modification which complies with the intent of the provisions of the USBC; or

2. The true intent of the USBC has been incorrectly interpreted; or

3. The provisions of the USBC do not fully apply; or

4. The use of a form of construction that is equal to or better than that specified in the USBC has been denied.

116.7.1. Form of application. Applications for appeals shall be submitted in writing to the local building code board of appeals.

116.8. Hearing open to public. All hearings shall be public and conducted in accordance with the applicable provisions of the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

116.9. Postponement of hearing. When a quorum (more than 50%) of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days.

116.10. Decision. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official. Every action of the board shall be by resolution. Certified copies shall be furnished to the appellant and to the building official.

116.11. Enforcement of decision. The building official shall take immediate action in accordance with the decision of the board.

116.12. Appeal by State Fire Marshal. This section shall apply only to buildings subject to inspection by § 36-130.3 of the Code of Virginia. The State Fire Marshal, appointed pursuant to § 36-130.2 of the Code of Virginia, shall have the right to inspect applications for building permits or conversions of use group. The State Fire Marshal may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the true intent of the USBC has been incorrectly interpreted as applied to the proposed construction or conversion. Such appeals shall be filed before the required permits are issued. The State Fire Marshal may also inspect the building during construction, repair or alteration and may appeal to the local building code board of appeals from the decision of the building official when it is claimed that the construction, repairs or alterations do not comply with the approved plans. Such appeals shall be filed prior to the issuance of the new or revised certificate of occupancy. Copies of all appeals shall be furnished to the building official and to the applicant for the building permit.

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Note: The building official is encouraged to have plans submitted to the State Fire Marshal for buildings subject to state licensure in order to prevent delays in construction.

SECTION 117.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

117.1. Appeal to the State Building Code Technical Review Board. Any person aggrieved by a decision of the local board of building code appeals who was a party to the appeal may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

117.2. Control of conflict of interest. A member of the State Technical Review Board shall not vote on any appeal in which that member is currently engaged as contractor or material dealer, has prepared plans or specifications, or has any personal interest.

117.3. Enforcement of decision. Upon receipt of the written decision of the State Building Code Technical Review Board, the building official shall take immediate action in accordance with the decision.

117.4. Court review. Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board may be presented to the court of the original jurisdiction in accordance with the location when not the provisions of the Administrative Process Act, Article 4 (§ 9-6.14-15 et seq.) of Chapter 1-1-1 of Title 9 of the Code of Virginia.

116.1. Local Board of Building Code Appeals (BBCA). Each jurisdiction shall have a BBCA to hear appeals as authorized herein [or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency approved by the Department of Housing and Community Development, to act on appeals] . The BBCA shall also hear appeals under Volume II of the USBC, the Building Maintenance Code, if the jurisdiction has elected to enforce that code. The jurisdiction may have separate BBCAs provided that each BBCA complies with this section. An appeal case decided by a separate BBCA shall constitute an appeal in accordance with this section and shall be final unless appealed to the State Building Code Technical Review Board (TRB).

116.2. Membership of BBCA. The BBCA shall consist of at least five members appointed by the jurisdiction and having terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and, as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed.

Written records of current membership, including a record of the current chairman and secretary, shall be maintained in the office of the jurisdiction. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

116.2.1. Chairman. The BBCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.

116.2.2. Secretary. The jurisdiction shall appoint a secretary to the BBCA to maintain a detailed record of all proceedings.

116.3. Qualifications of BBCA members. BBCA members shall be selected by the jurisdiction on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall, to the extent possible, represent different occupational or professional fields relating to the construction industry. Employees or officials of the jurisdiction shall not serve as members of the BBCA. At least one member should be an experienced builder and one member a licensed professional engineer or architect.

116.4. Disqualification of member. A member shall not hear an appeal in which that member has [~~any personal, professional, financial or any other~~] conflict of interest [in accordance with the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639 et seq.) of Title 2.1 of the Code of Virginia] .

116.5. Application for appeal. The owner of a building or structure, the owner's agent or any other person involved in the design or construction of the building or structure may appeal a decision of the [~~jurisdiction building official~~] concerning the application of the USBC or [~~its his~~] refusal to grant a modification to the provisions of the USBC covering the manner of construction or materials to be used in the erection, alteration or repair of that building or structure. The applicant shall submit a written request for appeal to the [~~jurisdiction BBCA~~] within 90 calendar days from the receipt of the decision to be appealed. The application shall contain the name and address of the owner of the building or structure and the person appealing if not the owner. A copy of the written decision of the [~~jurisdiction building official~~] shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the [~~jurisdiction BBCA~~] to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the [~~jurisdiction's building official's~~] decision.

116.6. Notice of meeting. The BBCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the

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addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

116.7. Hearing procedures. All hearings before the BBCA shall be open to the public. The appellant, the appellant's representative, the jurisdiction's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

116.7.1. Postponement. When five members of the BBCA are not present to hear an appeal, either the appellant or the appellant's representative shall have the right to request a postponement of the hearing. The [~~jurisdiction~~ BBCA] shall reschedule the appeal within 30 calendar days of the postponement.

116.8. Decision. The BBCA shall have the power to reverse or modify the decision of the [~~jurisdiction~~ building official] by a concurring vote of a majority of those present.

116.8.1. Resolution. The decision of the BBCA shall be by resolution signed by the chairman and retained as part of the record by the [~~jurisdiction~~ BBCA]. The following wording shall be part of the [~~decision~~ resolution] :

"Upon receipt of this [~~decision~~ resolution], any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to the State [Building Code Technical Review] Board within 21 calendar days. Application forms are available from the Office of the [State Building Code Technical] Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."

Copies of the [~~decision~~ resolution] shall be furnished to all parties.

116.9. Appeal to the TRB. After final determination by the BBCA, any person who was a party to the local appeal may appeal to the TRB. Appeals by an involved state agency from the decision of the building official for state-owned buildings shall be made directly to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the [~~jurisdiction~~ BBCA's resolution] or building official's decision.

116.9.1. Information to be submitted. Copies of the decision of the [~~jurisdiction~~ building official] and the resolution of the BBCA shall be submitted with the application for appeal. Upon request by the office of the [Review Board TRB)], the jurisdiction shall submit a copy of all pertinent information from the record of the BBCA. In the case of state-owned buildings, the involved state agency shall submit a copy of the building official's decision and

other relevant information.

116.9.2. Decision of TRB. Procedures of the TRB are in accordance with Article 2, [(§ 36.108 et seq.)] of Chapter 6 [(§ 36.107 et seq.)] of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the [~~jurisdiction of~~] building official shall take action accordingly.

SECTION ~~H8.0~~ 117.0 . EXISTING BUILDINGS AND STRUCTURES.

~~H8.1~~ 117.1 . Additions, alterations, and repairs. Additions, alterations or repairs to any structure shall conform to that required of a new structure without requiring the existing structure to comply with all of the requirements of this code. Additions, alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building. Any building plus new additions shall not exceed the height, number of stories and area specified for new buildings. Alterations or repairs to an existing structure which are structural or adversely affect any structural member or any part of the structure having a fire-resistance rating shall be made with materials required for a new structure.

Exception: Existing materials and equipment may be replaced with materials and equipment of a similar kind or replaced with greater capacity equipment in the same location when not considered a hazard.

Note 1: Alterations after construction may not be used by the building official as justification for requiring any part of the old building to be brought into compliance with the current edition of the USBC. For example, replacement of worn exit stair treads that are somewhat deficient in length under current standards does not, of itself, mean that the stair must be widened. It is the intent of the USBC that alterations be made in such a way as not to lower existing levels of health and safety.

Note 2: The intent of this section is that when buildings are altered by the addition of equipment that is neither required nor prohibited by the USBC, only those requirements of the USBC that regulate the health and safety aspects thereof shall apply. For example, a partial automatic alarm system may be installed when no alarm system is required provided it does not violate any of the electrical safety or other safety requirements of the code.

~~H8.1.1~~ 117.1.1 . Damage, restoration or repair in flood hazard zones. Buildings located in any flood hazard zone which are altered or repaired shall comply with the floodproofing requirements applicable to new buildings in the case of damages or cost of reconstruction or restoration which equals or exceeds 50% of the market value of the building before either the damage occurred or the start of construction of the improvement.

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Exceptions:

1. Improvements required under Volume II of the USBC necessary to assure safe living conditions.

2. Alterations of historic buildings provided the alteration would not preclude the building's continued designation as an historic building.

~~118.1.2~~ 117.1.2 . Requirements for accessibility. Buildings and structures which are altered or to which additions are added shall comply with applicable requirements of ~~Section 512.0~~ Chapter 11 .

~~118.2~~ 117.2 . Conversion of building use. No change shall be made in the use of a building which would result in a change in the use group classification unless the building complies with all applicable requirements for the new use group classification in accordance with Section 105.1(2). An application shall be made and a certificate of use and occupancy shall be issued by the building official for the new use. Where it is impractical to achieve exact compliance with the USBC the building official shall, upon application, consider issuing a modification under the conditions of Section 103.2 to allow conversion.

~~118.3~~ 117.3 . Alternative method of compliance. Compliance with the provisions of ~~Article 32~~ Chapter 34 for repair, alteration, change of use of, or additions to existing buildings shall be an acceptable method of complying with this code.

SECTION ~~119.0~~ 118.0 . MOVED BUILDINGS.

~~119.1~~ 118.1 . General. Any building moved into or within the jurisdiction shall be brought into compliance with the USBC unless it meets the following requirements after relocation.

1. No change has been made in the use of the building.
2. The building complies with all state and local requirements that were applicable to it in its previous location and that would have been applicable to it if it had originally been constructed in the new location.
3. The building has not become unsafe during the moving process due to structural damage or for other reasons.
4. Any alterations, reconstruction, renovations or repairs made pursuant to the move have been done in compliance with the USBC.

~~119.2~~ 118.2 . Certificate of use and occupancy. Any moved building shall not be used until a certificate of use and occupancy is issued for the new location.

SECTION ~~120.0~~ 119.0 .

UNSAFE BUILDINGS.

~~120.1~~ 119.1 . Right of condemnation before completion. Any building under construction that fails to comply with the USBC through deterioration, improper maintenance, faulty construction, or for other reasons, and thereby becomes unsafe, unsanitary, or deficient in adequate exit facilities, and which constitutes a fire hazard, or is otherwise dangerous to human life or the public welfare, shall be deemed either a public nuisance or an unsafe building. Any such unsafe building shall be made safe through compliance with the USBC or shall be taken down and removed, as the building official may deem necessary.

~~120.1.1~~ 119.1.1 . Inspection of unsafe buildings; records. The building official shall examine every building reported as unsafe and shall prepare a report to be filed in the records of the department. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

~~120.1.2~~ 119.1.2 . Notice of unsafe building. If a building is found to be unsafe the building official shall serve a written notice on the owner, the owner's agent or person in control, describing the unsafe condition and specifying the required repairs or improvements to be made to render the building safe, or requiring the unsafe building or portion thereof to be taken down and removed within a stipulated time. Such notice shall require the person thus notified to declare without delay to the building official the acceptance or rejection of the terms of the notice.

~~120.1.3~~ 119.1.3 . Posting of unsafe building notice. If the person named in the notice of unsafe building cannot be found after diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

~~120.1.4~~ 119.1.4 . Disregard of notice. Upon refusal or neglect of the person served with a notice of unsafe building to comply with the requirement of the notice to abate the unsafe condition, the legal counsel of the jurisdiction shall be advised of all the facts and shall be requested to institute the appropriate legal action to compel compliance.

~~120.1.5~~ 119.1.5 . Vacating building. When, in the opinion of the building official, there is actual and immediate danger of failure or collapse of a building, or any part thereof, which would endanger life, or when any building or part of a building has fallen and life is endangered by occupancy of the building, the building official may order the occupants to vacate the building forthwith. The building official shall cause a notice to be posted at each entrance to such building reading as follows. "This Structure is Unsafe and its Use or Occupancy has been Prohibited by the Building Official." No person shall thereafter enter such a building except for one of the

following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections authorized by the building official.

~~120.1.6~~ 119.1.6 . Temporary safeguards and emergency repairs. When, in the opinion of the building official, there is immediate danger of collapse or failure of a building or any part thereof which would endanger life, or when a violation of this code results in a fire hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, he shall cause the necessary work to be done to the extent permitted by the local government to render such building or part thereof temporarily safe, whether or not legal action to compel compliance has been instituted.

~~120.2~~ 119.2 . Right of condemnation after completion. Authority to condemn unsafe buildings on which construction has been completed and a certificate of occupancy has been issued, or which have been occupied, may be exercised after official action by the local governing body pursuant to § 36-105 of the Code of Virginia.

~~120.3~~ 119.3 . Abatement or removal. Whenever the owner of a building that has been deemed to be a public nuisance or unsafe, pursuant to Section ~~120.1~~ 119.1 or Section ~~120.2~~ 119.2 , fails to comply with the requirements of the notice to abate, the building official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to § 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city or town may abate, raze, or remove such public nuisance, and a county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

SECTION ~~121.0~~ 120.0 . DEMOLITION OF BUILDINGS.

~~121.1~~ 120.1 . General. Demolition permits shall not be issued until the following actions have been completed:

1. The owner or the owner's agent has obtained a release from all utilities having service connections to the building stating that all service connections and appurtenant equipment have been removed or sealed and plugged in a safe manner.
2. Any certificate required by Section 105.10 has been received by the building official.
3. The owner or owner's agent has given written notice to the owners of adjoining lots and to the

owners of other lots affected by the temporary removal of utility wires or other facilities caused by the demolition.

~~121.2~~ 120.2 . Hazard prevention. When a building is demolished or removed, the established grades shall be restored and any necessary retaining walls and fences shall be constructed as required by the provisions of ~~Article 30~~ Chapter 33 of the BOCA Code.

ADDENDUM 1. AMENDMENTS TO THE BOCA NATIONAL BUILDING CODE/ 1990 1993 EDITION.

As provided in Section 101.3 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the BOCA National Building Code/ 1990 1993 Edition for use as part of the USBC.

ARTICLE CHAPTER 1. ADMINISTRATION AND ENFORCEMENT.

[(A)] Entire ~~article~~ chapter is deleted and replaced by ~~Article~~ Chapter 1, Adoption, Administration and Enforcement, of the Virginia Uniform Statewide Building Code.

ARTICLE CHAPTER 2. DEFINITIONS.

(A) Change the following definitions in Section ~~201.0~~ 202.0 , General Definitions, to read:

"Building" means a combination of any materials, whether portable or fixed, *having a roof to form that forms* a structure for the use or occupancy by persons or property; provided, however, that farm buildings not used for residential purposes and frequented generally by the owner, members of his family, and farm employees shall be exempt from the provisions of the USBC, but such buildings lying within a flood plain or in a mudslide-prone area shall be subject to flood proofing regulations or mudslide regulations, as applicable. The word building shall be construed as though followed by the words "or part or parts and fixed equipment thereof" unless the context clearly requires a different meaning. The word "building" includes the word "structure."

Dwellings:

"Boarding house" means a building arranged or used for lodging, with or without meals, for compensation and not occupied as a single family unit.

"Dormitory" means a space in a building where group sleeping accommodations are provided for persons not members of the same family group, in one room, or in a series of closely associated rooms.

"Hotel" means any building containing six or more guest rooms, intended or designed to be used, or

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which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests.

"Multi-family apartment house" means a building or portion thereof containing more than two dwelling units and not classified as a one- or two-family dwelling.

"One-family dwelling" means a building containing one dwelling unit.

"Two-family dwelling" means a building containing two dwelling units.

"Jurisdiction" means the local governmental unit which is responsible for enforcing the USBC under state law.

"Mobile unit" means a structure of vehicular, portable design, built on a chassis and designed to be moved from one site to another, subject to the Industrialized Building and Manufactured Home Safety Regulations, and designed to be used without a permanent foundation.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee ~~or other person, firm or corporation~~ in control of a building.

"Structure" means an assembly of materials forming a construction for use including stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks, trestles, piers, wharves, swimming pools, amusement devices, storage bins, and other structures of this general nature. The word structure shall be construed as though followed by the words "or part or parts thereof" unless the context clearly requires a different meaning.

(B) Add these new definitions to Section ~~201.0~~ 202.0 , General Definitions:

"Family" means an individual or married couple and the children thereof with not more than two other persons related directly to the individual or married couple by blood or marriage; or a group of not more than eight unrelated persons, living together as a single housekeeping unit in a dwelling unit.

"Farm building" means a structure located on a farm utilized for the storage, handling or production of agricultural, horticultural and floricultural products normally intended for sale to domestic or foreign markets and buildings used for the maintenance, storage or use of animals or equipment related thereto.

"Historic building" means any building that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Federal Department of Interior) or preliminarily determined

by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on the Virginia Department of Historic Resources' inventory of historic places; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Virginia Department of Historic Resources.

"Local government" means any city, county or town in this state, or the governing body thereof.

"Manufactured home" means a structure subject to federal regulations, which is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single family dwelling, with or without a permanent foundation when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

"Night club" means a place of assembly that provides exhibition, performance or other forms of entertainment; serves food or alcoholic beverages or both; and provides music and space for dancing.

"Plans" means all drawings that together with the specifications, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

"Public nuisance" means, for the purposes of this code, any public or private building, wall or structure deemed to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation, occupancy or use, or the condition of which constitutes a menace to the health and safety of the occupants thereof or to the public.

"Skirting" means a weather-resistant material used to enclose the space from the bottom of a manufactured home to grade.

"Specifications" means all written descriptions, computations, exhibits, test data and other documents that together with the plans, describe the proposed building construction in sufficient detail and provide sufficient information to enable the building official to determine whether it complies with the USBC.

ARTICLE CHAPTER 3. USE GROUP CLASSIFICATION OR OCCUPANCY.

(A) Change Section 307.2 Add an exception to Section 308.2 to read as follows:

307.2. Use Group I-1. This use group shall include buildings and structures, or parts thereof, which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I-1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Exception: Group homes licensed by the Virginia Department of Mental Health, Mental Retardation and Substance Abuse Services which house no more than eight mentally ill, mentally retarded, or developmentally disabled persons, with one or more resident counselors, shall be classified as Use Group R-3.

(B) Change [Add new Section] 309.4 310.5.2 [to read as follows: Reserved.]

[310.5.2. Family day home. A family day home as defined by § 63.1-195 of the Code of Virginia shall be classified as Use Group R-3.]

309.4. Use Group R-3 structures. This use group shall include all buildings arranged for the use of one- or two-family dwelling units and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two-hour fire separation assembly (see Section 909.0).

Exception: In multiple single-family dwellings which are equipped throughout with an approved automatic sprinkler system installed in accordance with Section 1004.2.1 or 1004.2.2, the fire-resistance rating of the dwelling unit separation shall not be less than one hour. Dwelling unit separation walls shall be constructed as fire partitions (see Section 910.0).

ARTICLE 4. TYPES OF CONSTRUCTION CLASSIFICATION.

(A) Add the following to line 5 of Table 401.

Dwelling unit separations for buildings of Type 2C, 3B and 5B construction shall have fire-resistance ratings of not less than one-half hour in buildings sprinklered throughout in accordance with Section 1004.2.1 or 1004.2.2.

ARTICLE 5.

GENERAL BUILDING LIMITATIONS.

(A) Change Section 502.3 to read:

502.3. Automatic sprinkler system. When a building of other than Use Group H is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1 or 1004.2.2, the area limitation specified in Table 501 shall be increased by 200% for one- and two-story buildings and 100% for buildings more than two stories in height. An approved limited area sprinkler system is not considered as an automatic sprinkler system for the purpose of this section.

(B) Change Section 503.1 to read:

503.1. Automatic sprinkler system. When a building is equipped throughout with an automatic sprinkler system in accordance with Section 1004.2.1, the building height limitation specified in Table 501 shall be increased one story and 20 feet (6096mm). This increase shall not apply to buildings of Use Group I-2 of Types 2C, 3A, 4 and 5A construction nor to buildings of Use Group H. An approved limited-area sprinkler system is not considered an automatic sprinkler system for the purpose of this section. The building height limitations for buildings of Use Group R specified in Table 501 shall be increased one story and 20 feet, but not to exceed a height of four stories and 60 feet, when the building is equipped with an automatic sprinkler system in accordance with Section 1004.2.2.

(C) Replace Section 512.0, Physically Handicapped and Aged with the following new section:

SECTION 512.0. ACCESSIBILITY FOR DISABLED.

512.1. General. This section establishes requirements for accessibility by individuals with disabilities to be applied during the design, construction and alteration of buildings and structures.

512.2. Where required. The provisions of this section shall apply to all buildings and structures, including their exterior sites and facilities.

Exceptions:

1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.
2. Buildings and structures classified as Use Group U.
3. Those buildings or structures or portions thereof which are expressly exempted in the standards incorporated by reference in this section.
4. Those buildings or structures or portions thereof which are used exclusively for either private club or religious worship activities.

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512.2.1. Identification of parking spaces. All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface.

512.3. Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).
2. Title 28 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35604 and 35599-35602 (July 26, 1991).

ARTICLE 6 CHAPTER 4 SPECIAL USE AND OCCUPANCY REQUIREMENTS

(A) Add an exception to Section 417.6 to read as follows:

Exception: The storage, dispensing and utilization of flammable and combustible liquids, in excess of the exempt amounts, at automotive service stations shall be in accordance with the fire prevention code listed in Chapter 35.

(A) (B) Change Section 610.2.1 420.0 to read as follows:

610.2.1. Waiting areas. Waiting areas shall not be open to the corridor, except where all of the following criteria are met:

1. The aggregate area of waiting areas in each smoke compartment does not exceed 600 square feet (56 m²);
2. Each area is located to permit direct visual supervision by facility staff;
3. Each area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
4. Each area is arranged so as not to obstruct access to the required exits; and
5. The walls and ceilings of the space are constructed as required for corridors.

(B) Delete Section 610.2.2; Waiting areas on other floors; but do not renumber remaining sections.

(C) Change Section 610.2.3 to read as follows:

610.2.3. Waiting areas of unlimited area. Spaces constructed as required for corridors shall not be open to

a corridor, except where all of the following criteria are met:

1. The spaces are not used for patient sleeping rooms, treatment rooms or specific use areas as defined in Section 313.1.4.1;
2. Each space is located to permit direct visual supervision by the facility staff;
3. Both the space and corridors that the space opens into in the same smoke compartment are protected by an automatic fire detection system installed in accordance with Section 1017.0; and
4. The space is arranged so as not to obstruct access to the required exits.

(D) Change Section 610.2.5 to read as follows:

610.2.5. Mental health treatment areas. Areas wherein only mental health patients who are capable of self-preservation are housed, or group meeting or multipurpose therapeutic spaces other than specific use areas as defined in Section 313.1.4.1, under continuous supervision by facility staff, shall not be open to the corridor, except where all of the following criteria are met:

1. Each area does not exceed 1,500 square feet (140 m²);
2. The area is located to permit supervision by the facility staff;
3. The area is arranged so as not to obstruct any access to the required exits;
4. The area is equipped with an automatic fire detection system installed in accordance with Section 1017.0;
5. Not more than one such space is permitted in any one smoke compartment; and
6. The walls and ceilings of the space are constructed as required for corridors.

(E) Change Section 610.3 and subsection 610.3.1 to read as follows:

610.3. Corridor walls. Corridor walls shall form a barrier to limit the transfer of smoke. The walls shall extend from the floor to the underside of the floor or roof deck above or to the underside of the ceiling above where the ceiling membrane is constructed to limit the transfer of smoke.

610.3.1. Corridor doors. All doors shall conform to Section 916.0. Corridor doors, other than those in a wall required to be rated by Section 313.1.4.1 or for the enclosure of a vertical opening, shall not have a required fire resistance

rating, but shall provide an effective barrier to limit the transfer of smoke.

(F) Change Section 610.5 to read as follows:

610.5. Automatic fire detection. An automatic fire detection system shall be provided in corridors and common spaces open to the corridor as permitted by Section 610.2.

(G) Delete Section 610.5.1, Rooms, and Section 610.5.2, Corridors.

(H) Add new Section 618.10 to read as follows:

SECTION 618.10. MAGAZINES.

618.10. Magazines. Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(I) Change Section 619.1 to read as follows:

619.1. Referenced codes. The storage systems for flammable and combustible liquids shall be in accordance with the mechanical code and the fire prevention code listed in Appendix A.

Exception: Aboveground tanks which are used to store or dispense motor fuels, aviation fuels or heating fuels at commercial, industrial, governmental or manufacturing establishments shall be allowed when in compliance with NFPA 30, 30A, 31 or 407 listed in Appendix A.

(J) Change Section 620.0 to read as follows:

SECTION 620.0 420.0 . MOBILE UNITS AND MANUFACTURED HOMES.

620.1 420.1 . General. Mobile units, as defined in Section 201.0 202.0 , shall be designed and constructed to be transported from one location to another and not mounted on a permanent foundation. Manufactured homes shall be designed and constructed to comply with the Federal Manufactured Housing Construction and Safety Standards and used with or without a permanent foundation.

620.2 420.2 . Support and anchorage of mobile units. The manufacturer of each mobile unit shall provide with each unit specifications for the support and anchorage of the mobile unit. The manufacturer shall not be required to provide the support and anchoring equipment with the unit. Mobile units shall be supported and anchored according to the manufacturer's specifications. The anchorage shall be adequate to withstand wind forces and uplift as required in Article 11 Chapter 16 for buildings and structures, based upon the size and weight of the mobile unit.

620.3 420.3 . Support and anchorage of manufactured homes. The manufacturer of the home shall provide with each manufactured home printed instructions specifying the location, required capacity and other details of the stabilizing devices to be used with or without a permanent foundation (i.e., tiedowns, piers, blocking, footings, etc.) based upon the design of the manufactured home. Manufactured homes shall be supported and anchored according to the manufacturer's printed instructions or supported and anchored by a system conforming to accepted engineering practices designed and engineered specifically for the manufactured home. Footings or foundations on which piers or other stabilizing devices are mounted shall be carried down to the established frost lines. The anchorage system shall be adequate to resist wind forces, sliding and uplift as imposed by the design loads.

620.3.1 420.3.1 . Hurricane zone. Manufactured homes installed or relocated in the hurricane zone shall be of Hurricane and Windstorm Resistive design in accordance with the Federal Manufactured Housing Construction and Safety Standards and shall be anchored according to the manufacturer's specifications for the hurricane zone. The hurricane zone includes the following counties and all cities located therein, contiguous thereto, or to the east thereof. Accomack, King William, Richmond, Charles City, Lancaster, Surry, Essex, Mathews, Sussex, Gloucester, Middlesex, Southampton, Greensville, Northumberland, Westmoreland, Isle of Wight, Northampton, York, James City, New Kent, King & Queen and Prince George.

620.3.2 420.3.2 . Flood hazard zones. Manufactured homes and mobile units which are located in a flood hazard zone shall comply with the requirements of Section 2101.6 3107.1 .

Exception: Manufactured homes installed on sites in an existing manufactured home park or subdivision shall be permitted to be placed no less than 36 inches above grade in lieu of being elevated at or above the base flood elevation provided no manufactured home at the same site has sustained flood damage exceeding 50% of the market value of the home before the damage occurred.

620.4 420.4 . Used mobile/manufactured homes. When used manufactured homes or used mobile homes are being installed or relocated and the manufacturer's original installation instructions are not available, installations complying with the applicable portions of NCSBCS/ANSI A225.1 listed in Appendix A Chapter 35 shall be accepted as meeting the USBC.

620.5 420.5 . Skirting. Manufactured homes installed or relocated [after July 1, 1990,] shall have skirting installed within 60 days of occupancy of the home. Skirting materials shall be durable, suitable for exterior exposures, and installed in accordance with the manufacturer's installation instructions. Skirting shall be secured as necessary to ensure stability, to minimize vibrations, to

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minimize susceptibility to wind damage, and to compensate for possible frost heave. Each manufactured home shall have a minimum of one opening in the skirting providing access to any water supply or sewer drain connections under the home. Such openings shall be a minimum of 18 inches in any dimension and not less than three square feet in area. The access panel or door shall not be fastened in a manner requiring the use of a special tool to open or remove the panel or door. On-site fabrication of the skirting by the owner or installer of the home shall be acceptable, provided that the material meets the requirements of the USBC.

(C) Add new Section 422.0 to read as follows:

SECTION 422.0. MAGAZINES.

422.1. *Magazines.* Magazines for the storage of explosives, ammunition and blasting agents shall be constructed in accordance with the Statewide Fire Prevention Code as adopted by the Board of Housing and Community Development.

(K) (D) Add new Section ~~627.0~~ 423.0 to read as follows:

SECTION ~~627.0~~ 423.0 . UNDERGROUND STORAGE TANKS.

~~627.1~~ 423.1 . *General.* The installation, upgrade, or closure of any underground storage tanks containing an accumulation of regulated substances, shall be in accordance with the Underground Storage Tank Regulations adopted by the State Water Control Board. Underground Storage tanks containing flammable or combustible liquids shall also comply with the applicable requirements of Section ~~619.0~~ Sections 417.0 and 418.0 .

ARTICLE 7. INTERIOR ENVIRONMENTAL REQUIREMENTS.

(A) Add new Section 706.2.3 as follows:

706.2.3. *Insect screens.* Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Change Section 714.0 to read as follows:

SECTION 714.0. SOUND TRANSMISSION CONTROL IN RESIDENTIAL BUILDINGS.

714.1. *Scope.* This section shall apply to all common interior walls, partitions and floor/ceiling assemblies between adjacent dwellings or between a dwelling and

adjacent public areas such as halls, corridors, stairs or service areas in all buildings of Use Group R.

714.2. *Airborne noise.* Walls, partitions and floor/ceiling assemblies separating dwellings from each other or from public or service areas shall have a sound transmission class (STC) of not less than 45 for airborne noise when tested in accordance with ASTM E90 listed in Appendix A. This requirement shall not apply to dwelling entrance doors, but such doors shall be tight-fitting to the frame and sill. 714.3. *Structure borne sound.* Floor/ceiling assemblies between dwellings and between a dwelling and a public or service area within the structures shall have an impact insulation class (IC) rating of not less than 45 when tested in accordance with ASTM E402 listed in Appendix A.

714.4. *Tested assemblies.* Where approved, assemblies of building construction listed in GA 600, NCMA TEK 60A and BIA TN 5A listed in Appendix A shall be accepted as having the STC and IC ratings specified therein for determining compliance with the requirements of this section.

(C) Add new Section 715.0 to read as follows:

SECTION 715.0. HEATING FACILITIES.

715.1. *Residential buildings.* Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C); in all habitable spaces, bathrooms; and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

715.2. *Other structures.* Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exceptions:

1. Processing, storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

ARTICLE 8. MEANS OF EGRESS.

(A) Change Exception 6 of Section 813.4.1 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

a. The building is occupied by employees only and all employees have ready access to the unlocking device.

b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

(B) Add new Exception 7 to Section 813.4.1 to read as follows:

Exception

7. Locking arrangements conforming to Section 813.4.5.

(C) Add new Section 813.4.5 to read as follows:

813.4.5. Building entrance doors. In Use Groups A, B, E, M, R-1 and R-2, the building entrance doors in a means of egress are permitted to be equipped with an approved entrance and egress control system which shall be installed in accordance with items 1 through 6 below.

1. A sensor shall be provided on the egress side arranged to detect an occupant approaching the doors. The doors shall be arranged to unlock by a signal from or loss of power to the sensor.

2. Loss of power to that part of the access control system which locks the doors shall automatically unlock the doors.

3. The doors shall be arranged to unlock from a

manual exit device located 48 inches (1219 mm) vertically above the floor and within five feet (1524 mm) of the secured doors. The manual exit device shall be readily accessible and clearly identified by a sign. When operated, the manual exit device shall result in direct interruption of power to the lock - independent of the access control system electronics - and the doors shall remain unlocked for a minimum of 30 seconds.

4. Activation of the building fire protective signaling system, if provided, shall automatically unlock the doors, and the doors shall remain unlocked until the fire protective signaling system has been reset.

5. Activation of the building sprinkler or detection system, if provided, shall automatically unlock the doors. The doors shall remain unlocked until the fire protective signaling system has been reset.

6. The doors shall not be secured from the egress side in Use Groups A, B, E and M during periods when the building is accessible to the general public.

(D) Add new Section 826.0 to read as follows:

SECTION 826.0. EXTERIOR DOORS.

826.1. Swinging entrance doors. Exterior swinging doors of each dwelling unit in buildings of Use Group R-2 shall be equipped with a dead bolt lock, with a throw of not less than one inch, and shall be capable of being locked or unlocked by key from the outside and by turn-knob from the inside.

826.2. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

826.3. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

ARTICLE 10 CHAPTER 9. FIRE PROTECTION SYSTEMS.

(A) Delete Section 1000.3.

(B) Change Section 1002.6 to read as follows:

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1002.6. Use Group I. Throughout all buildings with a Use Group I fire area:

Exception: Use Group I-2 child care facilities located at the level of exit discharge and which accommodate 100 children or less. Each child care room shall have an exit door directly to the exterior.

(C) Change Section 1002.8 to read as follows:

1002.8. Use Group R-1. Throughout all buildings of Use Group R-1.

Exception: Use Group R-1 buildings where all guestrooms are not more than three stories above the lowest level of exit discharge of the exits serving the guestroom. Each guestroom shall have at least one door opening directly to an exterior exit access which leads directly to the exits.

(D) (A) Change Section 1002.9 904.9 *Exceptions* to read as follows:

The following exceptions may be applied only when adequate [municipal] water supply is not available at the proposed building site.

[For the purposes of this section "adequate" means the necessary water pressure and volume provided by a water purveyor.]

1002.9. Use Group R-2. Throughout all buildings of Use Group R-2.

Exceptions.

1. Use Group R-2 buildings where all dwelling units are not more than one story above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit. Buildings which do not exceed two stories, including basements which are not considered as a story above grade, and with a maximum of 12 dwelling units per fire area. Each dwelling unit shall have at least one door opening to an exterior exit access that leads directly to the exits required to serve that dwelling unit.

2. Use Group R-2 buildings. Buildings where all dwelling units or bedrooms are not more than three stories above the lowest level of exit discharge and not more than one story below the highest level of exit discharge of exits serving the dwelling unit or bedrooms of a dormitory or boarding house and every two dwelling units or bedrooms of a dormitory or boarding house are separated from other dwelling units or bedrooms of a dormitory or boarding house in the building by fire separation assemblies (see Sections 909.0 and 913.0 709.0 and 713.0) having a fire-resistance rating of not less than two hours.

(E) (B) Add new Section 1002.12 904.12 to read as follows:

1002.12 904.12 . Use Group B, when more than 50 feet in height. Fire suppression systems shall be installed in buildings and structures of Use Group B, when more than 50 feet in height and less than 75 feet in height according to the following conditions:

1. The height of the building shall be measured from the point of the lowest grade level elevation accessible by fire department vehicles at the building or structure to the floor of the highest occupiable story of the building or structure.

2. Adequate public water supply is available to meet the needs of the suppression system.

3. Modifications for increased allowable areas and reduced fire ratings permitted by Sections 502.3, 503.1, 905.2.2, 905.3.1, 921.7.2, 921.7.2.2, 922.8.1 503.3, 504.2, 506.3, 705.2.3, 705.3.1, 720.7.1, 720.7.2, 803.4.3 , and any others not specifically listed shall be granted.

4. The requirements of Section 602.0 403.0 for high-rise buildings, such as, but not limited to voice alarm systems, central control stations, and smoke control systems, shall not be applied to buildings and structures affected by this section.

(F) Change Sections 1004.1 through 1004.2.2 to read as follows:

1004.1. General. Automatic sprinkler systems shall be approved and shall be designed and installed in accordance with the provisions of this code.

1004.2. Equipped throughout. Where the provisions of this code require that a building or portion thereof be equipped throughout with an automatic sprinkler system, the system shall be designed and installed in accordance with Section 1004.2.1, 1004.2.2 or 1004.2.3.

Exception: Where the use of water as an extinguishing agent is not compatible with the fire hazard (see Section 1003.2) or is prohibited by a law, statute or ordinance, the affected area shall be equipped with an approved automatic fire suppression system utilizing a suppression agent that is compatible with the fire hazard.

1004.2.1. NFPA 13 systems. The systems shall be designed and installed in accordance with NFPA 13 listed in Appendix A.

Exception: In Use Group R fire areas, sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

1004.2.1.1. Quick response sprinklers. NFPA 13 systems installed in Use Group I-2 fire areas shall use quiet

response sprinklers in patient sleeping rooms.

1004.2.2. NFPA 13R systems: In buildings four stories or less in height, systems designed and installed in accordance with NFPA 13R listed in Appendix A shall be permitted in Use Group I-1 fire areas in buildings with not more than 16 occupants, and in Use Group R fire areas.

Exception: Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area and are located within individual dwelling units or guestrooms.

(G) Add new Section 1004.2.3 to read as follows:

1004.2.3. NFPA 13D systems: In Use Group I-1 fire areas in buildings with not more than eight occupants, systems designed and installed in accordance with NFPA 13D listed in Appendix A shall be permitted.

Exceptions:

1. Sprinklers shall not be required in bathrooms that do not exceed 55 square feet in area.

2. A single fire protection water supply shall be permitted to serve not more than eight dwelling units.

(C) Change Section 917.4.6 to read as follows:

917.4.6. Use Group R-2. A fire protective signaling system shall be installed and maintained in all buildings of Use Group R-2 where any dwelling unit or bedroom is located three or more stories above the lowest level of exit discharge or more than one story below the highest level of exit discharge of exits serving the dwelling unit or bedroom.

(H) (D) Add new Section 1018.3.5 917.8.3 to read as follows:

1018.3.5 917.8.3. Smoke detectors for the deaf and hearing impaired. Smoke detectors for the deaf and hearing impaired shall be provided as required by § 36-99.5 of the Code of Virginia.

CHAPTER 10. MEANS OF EGRESS.

[(A) Reserved.]

[(A) (B)] Change Section 1017.4.1 Exception 6 to read as follows:

6. Devices such as double cylinder dead bolts which can be used to lock doors to prevent egress shall be permitted on egress doors in Use Groups B, F, M or S. These doors may be locked from the inside when all of the following conditions are met:

a. The building is occupied by employees only and

all employees have ready access to the unlocking device.

b. The locking device is of a type that is readily distinguished as locked, or a "DOOR LOCKED" sign with red letters on white background is installed on the locked doors. The letters shall be six inches high and 3/4 of an inch wide.

c. A permanent sign is installed on or adjacent to lockable doors stating "THIS DOOR TO REMAIN UNLOCKED DURING PUBLIC OCCUPANCY." The sign shall be in letters not less than one-inch high on a contrasting background.

[(B) (C)] Add [the] new Section 1017.4.4.1.

1017.4.4.1. Exterior sliding doors. In dwelling units of Use Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent its being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

[(E) (D)] Add new Section 1017.4.4.2.

1017.4.4.2. Entrance doors. Entrance doors to dwelling units of Use Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

CHAPTER 11. ACCESSIBILITY.

Entire Chapter 11 is deleted and replaced with the following new Chapter 11.

1101.1. General. This chapter establishes requirements for accessibility by individuals with disabilities to be applied during the design, construction and alteration of buildings and structures.

1101.2. Where required. The provisions of this chapter shall apply to all buildings and structures, including their exterior sites and facilities.

Exceptions:

1. Buildings of Use Group R-3 and accessory structures and their associated site and facilities.

2. Buildings and structures classified as Use Group U.

3. Those buildings or structures or portions thereof

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which are expressly exempted in the standards incorporated by reference in this section.

4. Those buildings or structures or portions thereof which are used exclusively for either private club or religious worship activities.

1101.2.1. Identification of parking spaces. All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with the bottom edge no lower than four feet nor higher than seven feet above the parking surface.

[512.3. 1101.3.] Referenced standards. The following standards or parts thereof are hereby incorporated by reference for use in determining compliance with this section:

1. Title 24 Code of Federal Regulations, Chapter 1 - Fair Housing Accessibility Guidelines, Sections 2 through 5, 56 F.R. 9499-9515 (March 6, 1991).

2. Title 24 Code of Federal Regulations, Part 36 - Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, Subpart A - General, § 36.104 Definitions and Subpart D - New Construction and Alterations, 56 F.R. 35593-35594 and 35599-35602 (July 26, 1991).

CHAPTER 12. INTERIOR ENVIRONMENT.

(A) Add new Section 1208.5 as follows:

1208.5. Insect screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) Add new Section 1216.0 as follows:

SECTION 1216.0. HEATING FACILITIES.

1216.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

1216.2. Other structures. Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupant thereof; and every occupant of any structure or part thereof who rents or leases said structure or part thereof on terms, either express or implied, to supply its own heat, shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C), during all working hours in all enclosed spaces or rooms where persons are employed and working. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exceptions:

1. Processing, storage and operations areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

[CHAPTER 13.

ENERGY CONSERVATION.

Entire Chapter 13 is deleted and replaced with the following new Chapter 13.

1301.1. General. This chapter establishes the requirements for energy conservation to be applied during the design, construction and alteration of buildings and structures.

1301.2. Scope. The provisions of this chapter shall apply to all buildings and structures.

1301.3. Referenced standard. The following standard is hereby incorporated by reference for use in determining compliance with this section:

CABO Model Energy Code (MEC) 1993 Edition]

CHAPTER 16. STRUCTURAL LOADS.

(A) Revise Section 1612.1 by adding Exception 5 to read:

5. [~~Building~~ Buildings] assigned to seismic performance Category B, according to Section 1612.1.7 and [~~are to~~] seismic hazard exposure group I according to Section 1612.1.5, which comply with all of the following, need only comply with Section 1612.3.6.1.

- a. The height of the building does not exceed four stories.

b. The height of the building does not exceed 40 feet.

c. AvS is less than 0.10 and the soil profile type has been verified.

d. If the building is more than one story in height, it does not have a vertical irregularity of Type 5 in Table 1612.3.4.2.

(B) Revise Section 1612.3.5.2 by adding an exception to read:

Exception: Regular or irregular buildings assigned to Category B which are seismic hazard exposure group I are not required to be analyzed for seismic forces for the building as a whole, providing all of the following apply:

1. The height of the building does not exceed four stories.

2. The height of the building does not exceed 40 feet.

3. AvS is less than 0.10 and the soil profile type has been verified.

4. If the building is more than one story in height, it does not have a vertical irregularity of Type 5 in Table 1612.3.4.2.

(C) Revise Section 1612.3.6.2 by adding an exception to read:

Exception: Category B buildings which are seismic hazard exposure group I which are exempt from a seismic analysis for the building as a whole by Section 1612.3.5.2 need only comply with Section 1612.3.6.1.

ARTICLE 12. FOUNDATION SYSTEMS.

(A) Add new provision to Section 1205.0, Depth of Footings:

1205.4. Small storage sheds. The building official may accept utility sheds without footings when they are used for storage purposes and do not exceed 150 square feet in gross floor area when erected or mounted on adequate supports.

ARTICLE 13 CHAPTER 17 . MATERIALS AND TESTS STRUCTURAL TESTS AND INSPECTIONS .

(A) Add new Section 1300.4 1701.4 to read as follows:

1300.4 1701.4 . Lead based paint. Lead based paint with a lead content of more than .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

(B) Change Section 1308.1 1705.1 to read as follows:

1308.1 1705.1 . General. The permit applicant shall provide special inspections where application is made for construction as described in this section. The special inspectors shall be provided by the owner and shall be qualified and approved for the inspection of the work described herein.

Exception: Special inspections are not required for buildings or structures unless the design involves the practice of professional engineering or architecture as required by §§ 54.1-401, 54.1-402 and 54.1-406 of the Code of Virginia.

(C) Delete Section 1308.8 1705.12 , Special cases.

ARTICLE 17. WOOD.

(A) Change Section 1702.4.1 to read as follows:

1702.4.1. General. Where permitted for use as a structural element, fire-retardant treated wood shall be defined as any wood product which, when impregnated with chemicals by a pressure process in accordance with AWWA C20 or AWWA C27 listed in Appendix A or other means during manufacture, shall have, when tested in accordance with ASTM E84 listed in Appendix A, a flame spread rating not greater than 25 when the test is continued for a period of 30 minutes, without evidence of significant progressive combustion and the flame front shall not progress more than 10.5 feet (3200 mm) beyond the centerline of the burner at any time during the test. Fire-retardant treated wood shall be dried to a moisture content of 19% or less for lumber and 15% or less for plywood before use.

(B) Add new Sections 1702.4.1.1 and 1702.4.1.2 as follows:

1702.4.1.1. Strength modifications. Design values for untreated lumber, as specified in Section 1701.1, shall be adjusted when the lumber is pressure impregnated with fire-retardant chemicals. Adjustments to the design values shall be based upon an approved method of investigation which takes into consideration the effects of the anticipated temperature and humidity to which the fire-retardant treated wood will be subjected, the type of treatment, and the redrying procedures.

1702.4.1.2. Labeling. Fire-retardant treated lumber and plywood shall bear the label of an approved agency in accordance with Section 1307.3.2. Such label shall contain the information required by Section 1307.3.3.

ARTICLE 21. EXTERIOR WALLS.

(A) Delete Section 2101.6.9 Alterations and repairs, but do not renumber remaining sections.

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ARTICLE 25. MECHANICAL EQUIPMENT AND SYSTEMS.

(A) Change Section 2500.2 to read as follows:

2500.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Appendix A, as amended below:

1. Delete Article 17, Air Quality;
2. Add Note to M-2000.2 to read as follows:

Note: Boilers and pressure vessels constructed under this article shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

ARTICLE 27. ELECTRIC WIRING AND EQUIPMENT.

(A) Add Section 2700.5 to read as follows:

2700.5. Telephone outlets. Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

CHAPTER 21. MASONRY.

Revise Section 2104.2 by adding an exception to read:

Exception: Category B buildings which are seismic hazard exposure group I which are exempt from a seismic analysis for a building as a whole by Section 1612.3.5.2 are permitted to be designed in accordance with the requirements of either Section 2101.1.1 or 2101.1.2.

[CHAPTER 23. WOOD.

Add new Section 2310.2.3 to read as follows:

2310.2.3. Acceptance. Fire retardant-treated plywood shall not be used as roof sheathing without providing the building official with nationally recognized test results, satisfactory past product performance, or equivalent indicators of future product performance that address longevity of service under typical conditions of proposed installation as well as the degree to which it retards fire, structural strength, and other characteristics.]

CHAPTER 27. ELECTRIC WIRING, EQUIPMENT AND SYSTEMS.

[(A) Change Section 2701.1 to read as follows:

2701.1. Scope. The provisions of this chapter shall control the design and construction of all new installations of electrical conductors, equipment and systems in buildings or structures, and all alterations to existing wiring systems therein to ensure safety. All such installations shall conform to the provisions of NFPA 70 listed in Chapter 35 as amended below:

Change Section 550-23(a) Exception 2 by deleting item (a).

(B)] Add Section 2701.5 to read as follows:

2701.5. Telephone outlets. Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. In multifamily dwellings, the telephone wiring shall terminate inside or outside of the building at a point prescribed by the telephone company.

CHAPTER 28. MECHANICAL SYSTEMS.

(A) Change Section 2801.2 to read as follows:

2801.2. Mechanical code. All mechanical equipment and systems shall be constructed, installed and maintained in accordance with the mechanical code listed in Chapter 35, as amended below:

1. Delete Chapter 17, Air Quality.
2. Add note to M-601.1 to read as follows:

Note: Boilers and pressure vessels constructed under this chapter shall [also] be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

[3. Change Section M-813.3 to read as follows:

M-813.3. Compressed natural gas vehicular fuel systems. Compressed natural gas (CNG) fuel dispensing systems for CNG vehicles shall be designed and installed in accordance with NFPA 52 listed in Chapter 21. The referenced standard within NFPA 52 Section 2-11.5 and 6-1.2.6., shall be AGA/CGA NGV 1, Compressed Natural Gas Vehicles (NGV) Fueling Connection Devices.]

ARTICLE 28 CHAPTER 29 . PLUMBING SYSTEMS.

(A) Change Section ~~2800.1~~ 2901.1 to read as follows:

~~2800.1~~ 2901.1 . Scope. The design and installation of plumbing systems, including sanitary and storm drainage, sanitary facilities, water supplies and storm water and sewage disposal in buildings shall comply with the requirements of this article chapter and the plumbing code listed in Appendix A Chapter 35 (BOCA National Plumbing Code/ 1990 1993) as amended below:

1. Change Section ~~P-303.1~~ *P-304.1* to read as follows:

~~P-303.1~~ *P-304.1* . General. The water distribution and drainage system of any building in which plumbing fixtures are installed shall be connected to public water main and sewer respectively, if available. Where a public water main is not available, an individual water supply shall be provided. Where a public sewer is not available, a private sewage disposal system shall be provided conforming to the regulations of the Virginia Department of Health.

2. Change Section ~~P-303.2~~ *P-304.3* to read as follows:

~~P-303.2~~ *P-304.3* . Public systems available. A public water supply system or public sewer system shall be deemed available to premises used for human occupancy if such premises are within (number of feet and inches as determined by the local government) measured along a street, alley, or easement, of the public water supply or sewer system, and a connection conforming with the standards set forth in the USBC may be made thereto.

3. Change Section ~~P-308.3~~ *P-309.4* to read as follows:

~~P-308.3~~ *P-309.4* . Freezing. Water service piping and sewers shall be installed below recorded frost penetration but not less than (number of feet and inches to be determined by the local government) below grade for water piping and (number of feet and inches to be determined by the local government) below grade for sewers. In climates with freezing temperatures, plumbing piping in exterior building walls or areas subjected to freezing temperatures shall be adequately protected against freezing by insulation or heat or both.

4. Delete Section ~~P-311.0~~ *P-312.0* , Toilet Facilities for Workers.

5. Add new Section ~~P-604.2.1~~ *P-606.2.3* to read as follows:

~~P-604.2.1~~ *P-606.2.3* . Alarms. Malfunction alarms shall be provided for sewage pumps or sewage ejectors rated at 20 gallons per minute or less when used in Use Group R-3 buildings.

6. Add the following exception to Section P-1001.1:

4. A grease interceptor listed for use as a fixture trap may serve a single fixture or a combination sink of not more than three compartments when the vertical distance of the fixture drain to the inlet of the grease interceptor does not exceed 30 inches and the horizontal distance does not exceed 60 inches.

7. Change Note d of Table P-1202.1 to read:

Note d. For attached one and two family dwellings one automatic clothes washer connection shall be

required per 20 dwelling units. Automatic clothes washer connections are not required for Use Group R-4.

8. Revise Table P-1202.1 for Building Use Groups A-1, A-3, A-4 and A-5.

Building Use Group	Water Closets (Urinals see Section P-1218.2)	
	Males	Females
A-1 Assembly, theaters	± per 125	± per 65
A-2 Assembly, nightclubs	± per 40	± per 40
A-3 Assembly, restaurants	± per 75	± per 75
A-3 Assembly, halls, museums, etc.	± per 125	± per 65
A-4 Assembly, churches(b)	± per 150	± per 75
A-5 Assembly, stadiums, pools, etc.	± per 100	± per 50

9. Add Note e to Table P-1202.1 to reference Use Group I-2 day nurseries to read as follows:

Note e. Day nurseries shall only be required to provide one bathtub or shower regardless of the number of occupants.

10 6 . Delete Section ~~P-1203.0~~ *P-1205.0* , Handicap Accessible Plumbing Facilities , but do not renumber the remaining sections in the article .

11 7 . Add new Section ~~P-1501.3~~ *P-1503.3* :

~~P-1501.3~~ *P-1503.3* . Public water supply and treatment. The approval, installation and inspection of raw water collection and transmission facilities, treatment facilities and all public water supply transmission mains shall be governed by the Virginia Waterworks Regulations. The internal plumbing of buildings and structures, up to the point of connection to the water meter shall be governed by this code. Where no meter is installed, the point of demarcation shall be at the point of connection to the public water main; or, in the case of an owner of both public water supply system and the building served, the point of demarcation is the point of entry into the building.

Note: See Memorandum of Agreement between the Board of Housing and Community Development and the Virginia Department of Health, signed July 21, 1980.

12. Add the following exception to P-1503.8:

Exception: Pursuant to § 36-00-10 of the Code of Virginia, based upon the lack of present or future water supply, local government may elect to apply the provisions of Section P-1503.8 to all or a portion of their locality.

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12. Add new Section P-1503.9 to read as follows:

P-1503.9. Maximum flow and water consumption: The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall be in accordance with Table P-1503.9. Water consumption for water closets listed in the exceptions below shall use a maximum of four gallons per flushing cycle. Water consumption for urinals listed in the exceptions below shall use a maximum of 1-1/2 gallons per flush.

Exceptions:

1. Blowout design fixtures.
2. Penalware.
3. Clinical sinks.
4. Service sinks.
5. Emergency showers.
6. Water closets provided for public use in buildings of Use Groups A-1, A-2, A-3, and A-5.
7. Water closets provided for patients and residents in buildings of Use Group I-2.
8. Water closets provided for inmates and residents in buildings of Use Group I-3.

**Table P-1503.9.
Maximum Flow Rates and Consumption for Plumbing
Fixtures and Fixture Fittings.**

PLUMBING FIXTURE OR FIXTURE FITTING	MAXIMUM FLOW RATE OR QUANTITY
Water closet	1.6 gallon per flushing cycle
Urinal	1.0 gallon per flushing cycle
Shower head	2.5 gallon per minute at 80 psi
Lavatory nonpublic	2.2 gallon per minute at 60 psi
Lavatory public	0.5 gallon per minute at 80 psi
Lavatory public self-closing	metering 0.25 gallon per metering cycle
Sink faucet	2.2 gallon per minute at 60 psi

14 8 . Add Note to P-1506.3 P-1508.4 to read as follows:

Note: Water heaters which have a heat input of greater than 200,000 BTU per hour, a water temperature of over 210°F, or contain a capacity of more than 120 gallons shall be inspected and have a certificate of inspection issued by the Department of Labor and Industry.

15 9 . Delete Article Chapter 16, Individual Water Supply.

(B) Change Section ~~2804.3~~ 2905.3 to read as follows:

~~2804.3~~ 2905.3 . Private water supply. When public water mains are not used or available, a private source of water supply may be used. The [Health State] Department [of Health] shall approve the location, design and water quality of the source prior to the issuance of the permit. The building official shall approve all plumbing, pumping and electrical equipment associated with the use of a private source of water.

(C) Change Section ~~2807.1~~ 2906.1 to read as follows:

~~2807.1~~ 2906.1 . Private sewage disposal. When water closets or other plumbing fixtures are installed in buildings which are not located within a reasonable distance of a sewer, suitable provisions shall be made for disposing of the building sewage by some method of sewage treatment and disposal satisfactory to the administrative authority having jurisdiction. When an individual sewage system is required, the control and design of this system shall be as approved by the State Department of Health, which must approve the location and design of the system and septic tanks or other means of disposal. Approval of pumping and electrical equipment shall be the responsibility of the building official. Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of a building. Temporary recreational use buildings shall mean any building occupied intermittently for recreational purposes only.

ARTICLE 29 CHAPTER 31 . SIGNS SPECIAL CONSTRUCTION .

(A) Delete Section 2901.1, Owner's consent.

(B) (A) Delete Section 2901.2 3102.4.1 , New signs.

(C) Delete Section 2906.0, Bonds and Liability Insurance.

(B) Delete Section 3102.4.4, Construction Documents and Owner's Consent.

[(C) Delete Section 3107.10, Alterations and Repairs.]

ARTICLE 30 CHAPTER 33 . PRECAUTIONS DURING BUILDING OPERATIONS SITWORK, DEMOLITION AND CONSTRUCTION

(A) Change Section ~~3000.1~~ 3301.1 to read as follows:

~~3000.1~~ 3301.1 . Scope. The provisions of this article shall apply to all construction operations in connection with the erection, alteration, repair, removal or demolition of buildings and structures. It is applicable only to the

protection of the general public. Occupational health and safety protection of building-related workers are regulated by the Virginia Occupational Safety and Health Standards for the Construction Industry, which are issued by the Virginia Department of Labor and Industry.

APPENDIX A CHAPTER 35 . REFERENCED STANDARDS.

(A) Add the following standards standard :

NCSBCS/ANSI A225.1-87

Manufactured Home Installations (referenced in Section 620.4 420.4).

NFPA 13D-89

Installation of Sprinkler Systems in One and Two-Family Dwellings and Mobile Homes (referenced in Section 1004.2.3)

NFPA 30A-87

Automotive and Marine Service Station Code (referenced in Section 619.1).

NFPA 31-87

Installation of Oil Burning Equipment (referenced in Section 619.1)

NFPA 407-90

Aircraft Fuel Servicing (referenced in Section 619.1)

ADDENDUM 2. AMENDMENTS TO THE CABO ONE AND TWO FAMILY DWELLING CODE/ 1989 1992 EDITION AND 1990 1993 AMENDMENTS.

As provided in Section 101.4 of the Virginia Uniform Statewide Building Code, the amendments noted in this addendum shall be made to the CABO One and Two Family Dwelling Code/ 1989 1992 Edition and 1990 1993 Amendments for use as part of the USBC.

PART I. ADMINISTRATIVE.

Chapter 1. Administrative.

(A) Any requirements of Sections R-101 through R-117 that relate to administration and enforcement of the CABO One and Two Family Dwelling Code are superseded by Article Chapter 1, Adoption, Administration and Enforcement of the USBC.

PART II. BUILDING PLANNING.

Chapter 2. Building Planning.

(A) Change Section R-203.5 to read as follows:

R-203.5. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

(A) (B) Add Section ~~R-203.5~~ R-203.6 , Insect Screens:

R-203.5 R-203.6 . Insect Screens. Every door and window or other outside opening used for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tight fitting screens of not less than 16 mesh per inch.

(B) (C) Change Section R-206 to read as follows:

SECTION R-206. SANITATION.

Every dwelling unit shall be provided with a water closet, lavatory and a bathtub or shower.

Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink of approved nonabsorbent material.

All plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

All plumbing fixtures shall be connected to an approved water supply and provided with hot and cold running water, except water closets may be provided with cold water only.

Modifications to this section may be granted by the local building official, upon agreement by the local health department, for reasons of hardship, unsuitable soil conditions or temporary recreational use of the building.

(C) (D) Add to Section R-211:

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Key operation is permitted from a dwelling unit provided the key cannot be removed when the door is locked from the side from which egress is to be made.

(D) [(E)] Change Section R-214.2 to read as follows:

R-214.2. Guardrails. Porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails not less than 36 inches in height.

Required guardrails on open sides of stairways, raised floor areas, balconies and porches shall have intermediate rails or ornamental closures which will not allow passage of an object six inches or more in diameter.]

[(E) (F)] Change Section R-215.1 to read:

R-215.1. Smoke detectors required. Smoke detectors shall be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms and on each story of the dwelling, including basements and cellars, but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels, a smoke detector need be installed only on the upper level, provided the lower level is less than one full story below the upper level, except that if there is a door between levels then a detector is required on each level. All detectors shall be connected to a sounding device or other detectors to provide, when activated, an alarm which will be audible in all sleeping areas. All detectors shall be approved and listed and shall be installed in accordance with the manufacturers instructions. When one or more sleeping rooms are added or created in existing dwellings, the addition shall be provided with smoke detectors located as required for new dwellings.

[(F) (G)] Add new Section R-220 R-223 :

SECTION R-220 R-223 . TELEPHONE OUTLETS

Each dwelling unit shall be prewired to provide at least one telephone outlet. All dwelling unit telephone wiring shall be a minimum of two-pair twisted wire cable. The telephone wiring shall terminate on the exterior of the building at a point prescribed by the telephone company.

[(G) (H)] Add new Section R-221 R-224 .

SECTION R-221 R-224 .

LEAD BASED PAINT

Lead based paint with a lead content of more than .06% by weight shall not be applied to any interior or exterior surface of a dwelling, dwelling unit or child care facility, including fences and outbuildings at these locations.

PART III. CONSTRUCTION.

Chapter 3. Foundations.

(A) Add Section R-301.6 to read as follows:

R-301.6. Floodproofing. All buildings or structures located in areas prone to flooding as determined by the governing body having jurisdiction shall be floodproofed in accordance with the provisions of Section ~~2101.6~~ 3107.0 of the 1990 1993 BOCA National Building Code.

Chapter 9. Chimneys and Fireplaces.

(A) Add Section R-903.10 as follows:

R-903.10. Spark arrester. Spark arrester screens shown in Figure R-904 are optional unless specifically required by the manufacturer of the fireplace stove or other appliance utilizing a chimney.

PART IV. MECHANICAL.

(A) Add new Section M-1101.1:

M-1101.1. Residential buildings. Every owner of any structure who rents, leases, or lets one or more dwelling units or guest rooms on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C), in all habitable spaces, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and maintain a temperature of not less than 60°F (16°C) during other hours. The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from exterior walls.

Exception: When the exterior temperature falls below 0°F (-18°C) and the heating system is operating at its full capacity, a minimum room temperature of 60°F (16°C) shall be maintained at all times.

PART V. PLUMBING.

Chapter 22. Plumbing, Drainage, Waste and Vent Systems (DWV).

(A) Change Section P-2206.8.2 to read as follows:

P-2206.8.2. Sewage ejectors or sewage pumps. A sewage ejector, sewage pump or grinder pump receiving discharge from a water closet shall have a minimum discharge velocity of 1.9 feet per second throughout the discharge piping to the point of connection with a gravity building drain, gravity sewer or pressure sewer system. A nongrinding pump or ejector shall be capable of passing a 1 1/2 inch-diameter solid ball, and the discharge piping shall have a minimum diameter of two inches. The

discharge piping of grinder pumps shall have a minimum diameter of 1 1/4 inches. All pumps shall be protected from backflow by a backwater or check valve. Malfunction alarms shall be provided on sewage pumps or sewage ejectors rated at 20 gallons per minute or less.

(B) Change Section P-2301 - Fixtures, fittings and appurtenances to read as follows:

P-2301.1. General. Plumbing fixtures, fittings, and appurtenances shall conform to the standards specified in Table No. P-2301 and shall be provided with an adequate supply of potable water to flush and keep the fixtures in a clean and sanitary condition without danger of backflow or cross-connection.

Exception: Pursuant to § 36-99.10 of the Code of Virginia, based upon the lack of present or future water supply, local government may elect to apply the provisions of Section P-2301.2 to all or a portion of their locality:

P-2301.2. Maximum flow and water consumption. The maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings shall comply with the following criteria:

- 1. Shower heads shall be of the water conserving type, which deliver a maximum flow rate of 2.5 gpm at 80 psi.
- 2. Faucets on lavatories shall be of the water conserving type, which deliver a maximum flow rate of 2.2 gpm at 60 psi.
- 3. Water closets shall be of the 1.6 gpf type and shall be provided with a flush tank or similar device designed and installed to supply water in sufficient quantity and flow to flush the contents of the fixture and refill the fixture trap.
- 4. Sink faucets shall be of the water conserving type, which deliver a minimum flow rate of 2.2 gpm at 60 psi.

PART VI. ELECTRICAL.

(A) Revise Part VI as follows:

The electrical installations shall conform to the Electrical Code for One and Two Family Dwellings (NFPA 70A-1990) published by the National Fire Protection Association.

PART VII. ENERGY CONSERVATION.

(A) Revise Part VII as follows:

The energy conservation requirements shall conform to Article 31 Chapter 13 of the [BOCA National Building

Code/] 1990 [1993 USBC, Volume I] .

VA.R. Doc. No. R94-464; Filed January 11, 1994, 11:12 a.m.

* * * * *

Title of Regulation: VR 394-01-22. Virginia Uniform Statewide Building Code, Volume II - Building Maintenance Code/ 1990 1993 .

Statutory Authority: §§ 36-98, 36-102 and 36-103 of the Code of Virginia.

Effective Date: April 1, 1994.

Summary:

The amendments update the existing regulation to reflect the requirements of the 1993 Edition of the National Model Building Maintenance Codes and Standards.

VR 394-01-22. Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code/1993.

Article Chapter 1. Adoption, Administration and Enforcement .

SECTION 100.0. GENERAL.

100.1. Title: These regulations shall be known as Volume II - Building Maintenance Code of the 1990 1993 edition of the Virginia Uniform Statewide Building Code (USBC). Except as otherwise indicated, Building Maintenance Code [(BMC)] or code, shall mean Volume II - Building Maintenance Code of the 1990 1993 edition of the USBC.

Note: See Volume I - New Construction Code of the USBC for regulations applicable to new construction.

100.2. Authority: The Building Maintenance Code is adopted according to regulatory authority granted the Board of Housing and Community Development by the Uniform Statewide Building Code Law, Chapter 6, Title 36, Code of Virginia.

100.3. Adoption: The Building Maintenance Code was adopted by order of the Board of Housing and Community Development on [November] 19, 1990 [15 December 13] , 1993 . This order was prepared according to the requirements of the Administrative Process Act. The order is maintained as part of the records of the Department of Housing and Community Development, and is available for public inspection.

100.4. Effective date: The Building Maintenance Code shall become effective on [March April] 1, 1991 1994 .

100.5. Effect on other codes: The Building Maintenance Code shall apply to all buildings and structures as defined in the Uniform Statewide Building Code Law, Chapter 6 [;

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§ 36-97 et seq.) of] Title 36 of the Code of Virginia. The Building Maintenance Code supersedes all building maintenance codes and regulations of the counties, municipalities political subdivisions and state agencies that have been or may be enacted or adopted, except as modified by Section 100.6, below.

Note: This will not prevent adoption in accordance with Chapter 1 [; (§ 15.1-1 et seq.) of] Title 15.1 of the Code of Virginia or other special or general legislation, or requirements by local governments which do not affect the manner of construction or materials to be used in the erection, alteration, repair, maintenance or use of a building or structure.

100.6. Application to pre-USBC buildings: Buildings or portions thereof constructed, altered, converted or repaired before the effective date of the initial edition of the USBC shall be maintained in compliance with the Building Maintenance Code. No provisions of the Building Maintenance Code shall require alterations to buildings or equipment unless an unsafe or unhealthy condition exists.

100.6.1. Hotels and motels: Pre-USBC hotels and motels shall also comply with applicable provisions of Section [~~100-0~~ 108.0].

100.6.2. Nursing homes and homes for adults: Pre-USBC nursing homes licensed by the Virginia Department of Health, and pre-USBC homes for adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of Section [~~100-0~~ 108.0].

[100.6.3. Reserved.]

100.7. Application to post-USBC buildings: Buildings or portions thereof that were subject to the USBC when constructed, altered, converted or repaired shall be maintained in compliance with the Building Maintenance Code and with the edition of the USBC that was in effect at that time.

100.7.1. Hotels and motels: Post-USBC hotels and motels shall also comply with applicable provisions of Section [~~100-0~~ 108.8].

100.7.2. Nursing homes and homes for adults: Post-USBC nursing homes licensed by the Virginia Department of Health, and post-USBC homes for adults licensed by the Virginia Department of Social Services shall also comply with applicable provisions of Section [~~100-0~~ 108.0].

[100.7.3. Reserved.]

100.8. Exemptions for certain equipment: The provisions of the Buildings Maintenance Code shall not apply to equipment installed by a provider of publicly regulated utility services, or to electrical equipment used for radio and television transmission. The exempt equipment shall be under the exclusive control of the public service agency and located on property by established rights.

Exception: Buildings or service equipment associated with the exempt equipment.

100.9. Exemptions for farm structures: Farm structures not used for residential purposes shall be exempt from the provisions of the Building Maintenance Code.

Exception: Farm structures lying within a flood plain or in a mudslide prone area shall be subject to floodproofing regulations or mudslide regulations, as applicable.

100.10. Purpose: The purpose of the Building Maintenance Code is to ensure public safety, health and welfare through proper building maintenance and use and continued compliance with minimum standards of building construction, energy conservation, water conservation, and physically handicapped and aged accessibility. Proper building maintenance shall be deemed to include the maintenance and inspection of building equipment defined by § 36-97(13) of the Code of Virginia.

SECTION 101.0. REQUIREMENTS.

101.1. Adoption of model code: The following model code, as amended by Sections 101.2 and 101.3, is hereby adopted and incorporated in the Building Maintenance Code.

THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/ ~~1990~~ 1993 EDITION

Published by:

Building Officials and Code Administrators International, Inc.
4051 West Flossmoor Road
County Club Hills, Illinois 60478-5795

101.2. Administrative and enforcement amendments to the referenced model code: All requirements of the referenced model code and of standards referenced therein that relate to administrative and enforcement matters are deleted and replaced by [Article Chapter] 1 of the Building Maintenance Code.

101.3. Other amendments to the referenced model code: The amendments noted in Addendum 1 shall be made to the specified articles chapters and sections of the BOCA National Property Maintenance Code/ ~~1990~~ 1993 edition for use as part of this code.

101.4. Limitation of application of model code: No provision of the model code may be used to require alterations to the design or equipment of any portion of a building that was subject to the USBC when constructed, altered or converted as to use group, and which is occupied in accordance with the certificate of occupancy issued under the applicable edition of the USBC. In the application of the model code to other buildings, no requirement of the current edition of Volume I, New Construction Code of the USBC shall be exceeded.

SECTION 102.0. LOCAL ENFORCING AGENCY.

102.1. Enforcement by local governments: Any local government may, after official action, enforce the Building Maintenance Code, or any portion of the code. The local governing body may assign responsibility for enforcement of the Building Maintenance Code, or any portion thereof, to a local agency or agencies of its choice. The terms "enforcing agency" and "code official" are intended to apply to the agency or agencies to which responsibility for enforcement has been assigned. The terms "building official" or "building department" apply only to the local building official or building department.

102.2. Right of inspection: The local governing body may inspect existing buildings to enforce the Building Maintenance Code, as authorized by § 36-105 of the Code of Virginia.

102.3. Interagency coordination: When enforcement of any portion of the Building Maintenance Code is assigned to an agency other than the building department, that agency shall coordinate its reports of inspection with the building department. All required alterations, repairs, installations or constructions shall be subject to the building permit and certificate of use and occupancy provisions of Volume I of the USBC.

102.4. Code official: Each local enforcing agency shall have an executive official in charge, hereinafter referred to as the code official.

102.4.1. Appointment: The code official shall be appointed in a manner selected by the local government having jurisdiction. The local government shall notify the Training and Certification Office within 30 days of the appointment or release of the code official. The code official shall complete an orientation course approved by the Department of Housing and Community Development within 90 days of appointment.

102.4.2. Qualifications: The code official shall have at least five years of experience as a licensed professional engineer, building inspector, fire inspector, housing inspector, contractor or superintendent of building construction, with at least three years in responsible charge of work, or shall have any combination of education and experience which would confer equivalent knowledge and ability. The code official shall have general knowledge with respect to the design and construction of buildings, the basic principles of fire prevention, plumbing, electrical and mechanical systems, building safety, and other accepted requirements for the health, safety and general welfare of the occupants and the public. The local governing body may establish additional qualification requirements.

102.4.3. Certification: The code official shall be certified in accordance with [~~Part VII of~~] the Virginia Certification Standards [(VR 394-01-2)] within three years from the date of employment.

Exception: An individual employed as the code official in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the code official in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

102.5. Qualifications of local enforcing agency personnel: The local government shall establish qualifications for the code official and technical assistants adequate to ensure proper administration and enforcement of the Building Maintenance Code.

(Note: It is recommended that the code official have at least five years of building maintenance related experience. Consideration should be given to the use of certification programs offered by the Department of Housing and Community Development.)

102.5. Qualifications of technical assistants: A technical assistant shall have at least three years in general building construction, building, fire or housing inspections, and general knowledge of plumbing, electrical and mechanical systems. Any combination of education and experience which would confer equivalent knowledge and ability shall be deemed to satisfy this requirement. The local governing body may establish additional qualification requirements.

102.5.1. Certification of technical assistants: Any person employed by, or under contract to, a local enforcing agency for determining compliance with the Building Maintenance Code shall be certified in accordance with the Virginia Certification Standards [(VR 394-01-2)] within three years from the date of employment.

Exception: An individual employed as the technical assistant in any locality in Virginia prior to April 1, 1995, shall be exempt from certification while employed as the technical assistant in that jurisdiction. This exemption shall not apply to subsequent employment in another jurisdiction.

102.6. Relief from personal responsibility: The local enforcing agency personnel shall not be personally liable for any damages sustained by any person in excess of the policy limits of errors and omissions insurance, or other equivalent insurance obtained by the locality to insure against any action that may occur to persons or property as a result of any act required or permitted in the discharge of official duties while assigned to the department as employees. The code official or the code official's subordinates shall not be personally liable for costs in any action, suit or proceedings that may be instituted in pursuance of the provisions of the USBC as a result of any act required or permitted in the discharge of official duties while assigned to the enforcing agency as employees, whether or not said costs are covered by insurance. Any suit instituted against any officer or employee because of an act performed by such officer or employee in the discharge of official duties and under the provisions of the Building Maintenance Code may be

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defended by the enforcing agency's legal representative.

102.7. Control of conflict of interest: The minimum standards of conduct for officials and employees of the enforcing agency shall be in accordance with the provisions of the [~~Virginia Comprehensive State and Local Government~~] Conflict of [~~Interest Interests~~] Act [(~~§ 2.1-639.1 et seq. of the Code of Virginia~~)].

~~102.8. Assistance by state: Upon notification of appointment of a code official, the Professional Services Office shall advise the official of all services offered and will keep the official continually informed of developments affecting the code and its interpretation and administration.~~

SECTION 103.0. DUTIES AND POWERS OF THE CODE OFFICIAL.

103.1. General: The code official shall enforce the provisions of the Building Maintenance Code as provided herein and as interpreted by the State Building Code Technical Review Board in accordance with § 36-118 of the Code of Virginia.

Note: Section 36-105 of the Code of Virginia provides that fees may be levied by the local governing body in order to defray the cost of enforcement and appeals.

103.2. Notices and orders: The code official shall issue all necessary notices or orders to ensure compliance with the requirements of this code for the health, safety and general welfare of the public.

103.3. Delegation of duties and powers: The code official may delegate duties and powers subject to any limitations imposed by the local government, but shall be responsible that any powers and duties delegated are carried out in accordance with the code.

103.4. Modifications: The code official may grant modifications to any of the provisions of this code upon application by the owner or the owner's agent provided the spirit and intent of the Building Maintenance Code are observed and public health, welfare, and safety are assured. A copy of the application for a modification and a copy of the final decision of the code official shall be kept in the permanent records of the enforcing agency.

103.5. Unsafe conditions not related to maintenance: When the code official finds a condition that constitutes a serious and dangerous hazard to life or health in a building which was constructed, altered, converted, or repaired before the effective date of the initial edition of the USBC, and when such condition was not caused by faulty maintenance, or by failure to comply with the applicable state and local regulations that were in effect at the time, the official may order the minimum changes needed to remedy the hazardous condition.

Note: The Building Maintenance Code does not generally provide for retrofitting existing buildings. However,

conditions may exist in older buildings, because of faulty design or equipment, that constitute such serious and dangerous hazards that correction is necessary to protect life and health. It is not the intent of this section that such changes comply fully with the requirements of the current edition of the USBC. Only those changes that are needed to remedy the serious and dangerous hazards to life or health may be required by the code official. Reference is also made to Section 103.2 of the administrative provisions of the Volume I of the USBC, which provides authority for modifications to be issued for alternate means to be used that provide the same level of safety.

103.6. Enforcing agency records: The code official shall keep records of reports of inspections, notices and orders issued and such other matters as directed by the local government. Records may be disposed of in accordance with the provisions of the Virginia Public Records Act [(~~§ 42.1-76 et seq. of the Code of Virginia~~)], (a) after one year in the case of buildings under 1,000 square feet in area and one and two family dwellings of any area, and (b) after three years in the case of all other buildings.

SECTION 104.0. VIOLATIONS.

104.1. Code violations prohibited: Buildings and equipment in violation of the provisions of this code shall not be used except as approved by the code official.

104.2. Notice of violation: The code official shall serve a notice of violation on the person responsible for maintenance or use of a building in violation of the provisions of this code. Such order shall reference the code section that serves as a basis for the violation and specify a time limit for the discontinuance or abatement of the violation. Such notice of violation shall be in writing, and be served by either delivering a copy of the notice to such person by mail to the last known post office address, ~~delivered~~ *delivering* in person or by delivering it to and leaving it in the possession of any person in charge of the premises, or by posting the notice in a conspicuous place at the entrance door or accessway if such person cannot be found on the premises.

104.3. Prosecution of violation: If the notice of violation is not complied with, the code official shall request, in writing, the legal counsel of the jurisdiction to institute the appropriate legal proceedings to restrain, correct or abate such violation; or to require the removal or termination of the use of the building in violation of the provisions of this code.

104.4. Violation penalties: Violations of this code are a misdemeanor in accordance with § 36-106 of the Code of Virginia, and upon conviction, may be punished by a fine of not more than \$2,500.

104.5. Abatement of violation: Conviction of a violation of this code shall not preclude the institution of appropriate legal action to require correction or abatement of th

violation or to prevent other violations or recurring violations of this code relating to maintenance and use of the building or premises.

104.6. Suspension or revocation of certificate of occupancy: The code official may suspend or revoke the certificate of occupancy for failure to correct repeated violations in apparent disregard for the provisions of the USBC.

SECTION 105.0. UNSAFE BUILDINGS.

105.1. General: This section shall apply to buildings and their equipment that fail to comply with the Building Maintenance Code through damage, deterioration, infestation, improper maintenance, or for other reasons, and thereby become unsafe, unsanitary, or deficient in adequate exit facilities, or which constitute a hazard or public nuisance, or are otherwise dangerous to human life, health or safety, or the public welfare. All such buildings or other structures declared by the code official to be a public nuisance or unfit for human habitation shall either be: made safe through compliance with this code, or be vacated and secured against public entry, or taken down and removed as determined by the code official. A vacant building, unsecured or open at door or window, may be deemed a fire hazard and unsafe within the meaning of this section.

105.2. Inspection of unsafe buildings: The code official shall examine any building reported as unsafe, and shall prepare a report to be filed in the records of the enforcing agency. In addition to a description of unsafe conditions found, the report shall include the use of the building, and nature and extent of damages, if any, caused by a collapse or failure.

105.3. Notice of unsafe buildings: If a building is found to be unsafe, the code official shall serve a notice to the owner, the owner's agent or person in control of the unsafe building. The notice shall specify the required repairs or improvements to be made to the building, or require the unsafe building, or portion of the building to be taken down and removed within a stipulated time. Such notice shall require the person notified to declare to the designated official without delay acceptance or rejection of the terms of the notice.

Note: Whenever possible, the notice of unsafe building should also be given to the tenants of the unsafe building.

105.4. Posting of unsafe building notice: If the person named in the notice of an unsafe building cannot be found, the notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be deemed the equivalent of personal notice.

105.5. Disregard of notice: If the person served with a notice of unsafe building refuses or neglects to comply with requirements of the notice to abate the unsafe

condition, the code official may revoke the certificate of occupancy. In the case of a vacant building, including one vacated through revocation of the certificate of occupancy, the code official may cause the building to be closed through any available means.

105.6. Authority to vacate building: When in the opinion of the code official, there is actual and immediate danger of failure or collapse of a building or any part of a building which would endanger life; or when any building or part of a building has fallen and life is endangered by occupancy of the building; or when any other hazardous condition poses an immediate and serious threat to life; or when a building or other structure is declared a public nuisance, or unfit for human habitation, the code official may order the occupants to vacate the building. The code official shall post a notice at each entrance to such building that reads: "THIS STRUCTURE IS UNSAFE OR UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE CODE OFFICIAL." Upon the posting of the notice, no person shall enter such a building except upon authorization of the code official for one of the following purposes: (i) to make the required repairs; (ii) to take the building down and remove it; or (iii) to make inspections.

105.7. Temporary safeguards and emergency repairs: When, in the opinion of the code official, there is immediate danger of collapse or failure of a building or any part of a building which would endanger life, or when a violation of this code results in a hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants, the code official shall have the necessary work done to the extent permitted by the local government to make such building or part of the building temporarily safe, whether or not legal action to force compliance has begun.

105.8. Abatement or removal: Whenever the owner of a building or structure that has been deemed to be a public nuisance pursuant to § 105.1 fails to comply with the requirements of the notice to abate, the code official may cause the building to be razed or removed.

Note: A local governing body may, after official action pursuant to § 15.1-29.21 or 15.1-11.2 of the Code of Virginia, maintain an action to compel a responsible party to abate, raze, or remove a public nuisance. If the public nuisance presents an imminent and immediate threat to life or property, then the governing body of the county, city or town may abate, raze, or remove such public nuisance, and a county, city or town may bring an action against the responsible party to recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

SECTION 106.0. APPEAL TO THE LOCAL BOARD OF BUILDING CODE APPEALS.

[106.1. *Procedures: Appeals from the application of the*

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Building Maintenance Code may be made by the owner of a building or structure to the local board of building code appeals (BBCA) of the jurisdiction established under Volume I of the USBC, including the right of appeal to the State Building Code Technical Review Board after final determination by the BBCA. Those procedures established in Volume I shall be used.]

Grounds for appeal: The owner of a building or the owner's agent may appeal from a decision of the code official to the local Building Code Board of Appeals established under Volume I of the USBC within 21 calendar days after the notice is served when it is claimed that:

1. The code official has refused to grant a modification of the provisions of the code;
2. The true intent of this code has been incorrectly interpreted; jurisdiction and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.
3. The provisions of this code do not fully apply;
4. The use of a form of compliance that is equal to or better than that specified in this code has been denied.

106.2. Form of application: Applications for appeals shall be submitted in writing to the Local Building Code board of Appeals.

106.3. Notice of meeting: The board shall meet upon notice of the chairman or at stated periodic meetings if warranted by the volume of work. The board shall meet within 30 calendar days of the filing of an appeal.

106.4. Hearing open to public: All hearings shall be public in accordance with the Virginia Freedom of Information Act. The appellant, the appellant's representative, the code official of the jurisdiction and any other person whose interest may be affected by the matter on appeal, shall be given an opportunity to be heard.

106.5. Postponement of hearing: A quorum shall be more than 50% of the board. When a quorum of the board, as represented by members or alternates, is not present to consider a specific appeal, either the appellant, the building official or their representatives may, prior to the start of the hearing, request a single postponement of the hearing of up to 14 calendar days. A vote equivalent to a majority of the quorum of the board is required to reverse or modify the decision of the building official.

106.6. Form of decision, notification: Every action of the board on an appeal shall be by resolution. Certified copies shall be furnished to the appellant, to the building official, and to the code official.

106.7. Enforcement of decision: The code official shall take

immediate action in accordance with the decision of the board.

SECTION 107.0. APPEAL TO THE STATE BUILDING CODE TECHNICAL REVIEW BOARD.

107.1. Appeal to the State Building Code Technical Review Board: Any person aggrieved by a decision of the local Board of Building Code Appeals, who was a party to the appeal, may appeal to the State Building Code Technical Review Board. Application for review shall be made to the State Building Code Technical Review Board within 21 calendar days of receipt of the decision of the local appeals board by the aggrieved party.

107.2. Enforcement of decision: Upon receipt of the written decision of the State Building Code Technical Review Board, the code official shall take immediate action in accordance with the decision.

107.3. Court review: Decisions of the State Building Code Technical Review Board shall be final if no appeal is made. An appeal from the decision of the State Building Code Technical Review Board shall be to the circuit court of original jurisdiction in accordance with the provisions of the Administrative Process Act, Article 4 of Chapter 1.1:1 of Title 9 of the Code of Virginia.

[106.1 Local Board of Building Code Appeals (BBCA): Each jurisdiction shall have a BBCA to hear appeals as authorized herein or it shall enter into an agreement with the governing body of another county or municipality or with some other agency, or a state agency approved by the Department of Housing and Community Development, to act on appeals. The jurisdiction may have separate BBCA's provided that each BBCA complies with this section. An appeal case decided by a separate BBCA shall constitute an appeal in accordance with this section and shall be final unless appealed to the State Building Code Technical Review Board (TRB).

106.2 Membership of BBCA: The BBCA shall consist of at least five members appointed by the jurisdiction and who shall have terms of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and, as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary, shall be maintained in the office of the jurisdiction. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

106.2.1. Chairman: The BBCA shall annually select one of its regular members to serve as chairman. In the event of the absence of the chairman at a hearing, the members present shall select an acting chairman.

106.2.2. Secretary: The jurisdiction shall appoint a

secretary to the BBCA to maintain a detailed record of all proceedings.

106.3. Qualifications of BBCA members: BBCA members shall be selected by the jurisdiction on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall, to the extent possible, represent different occupational or professional fields relating to the construction industry. Employees or officials of the jurisdiction shall not serve as members of the BBCA. At least one member should be an experienced builder and one member a licensed professional engineer or architect.

106.4. Disqualification of member: A member shall not hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act, Chapter 40.1 (§ 2.1-639.1 et seq.) of Title 2.1 of the Code of Virginia.

106.5. Application for appeal: The owner of a building or structure or the owner's agent may appeal a decision of the code official concerning the application of the BMC or his refusal to grant a modification to the provisions of the BMC covering the manner of maintenance or use or the materials to be used in the maintenance or repair of that building or structure. The applicant shall submit a written request for appeal to the BBCA within 21 calendar days from the receipt of the decision to be appealed. The application shall contain the name and address of the owner of the building or structure and the person appealing if not the owner. A copy of the written decision of the code official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the BBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the code official's decision.

106.6. Notice of meeting: The BBCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

106.7. Hearing procedures: All hearings before the BBCA shall be open to the public. The appellant, the appellant's representative, the jurisdiction's representative and any person whose interests are affected shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

106.7.1. Postponement: When five members of the BBCA are not present to hear an appeal, either the appellant or the appellant's representative shall have right to request a postponement of the hearing. The BBCA shall reschedule

the appeal within 30 calendar days of the postponement.

106.8. Decision: The BBCA shall have the power to reverse or modify the decision of the code official by a concurring vote of a majority of those present.

106.8.1. Resolution: The decision of the BBCA shall be by resolution signed by the chairman and retained as part of the record by the BBCA. The following wording shall be part of the resolution:

"Upon receipt of this resolution, any person who was a party to the appeal may appeal to the State Building Code Technical Review Board by submitting an application to the State Building Code Technical Review Board within 21 calendar days. Application forms are available from the Office of the State Building Code Technical Review Board, 501 North Second Street, Richmond, Virginia 23219, (804) 371-7170."

Copies of the resolution shall be furnished to all parties.

106.9. Appeal to the State Building Code Technical Review Board (TRB): After final determination by the BBCA, any person who was a party to the local appeal may appeal to the TRB. Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the BBCA's resolution.

106.9.1. Information to be submitted: Copies of the decision of the code official and the resolution of the BBCA shall be submitted with the application for appeal. Upon request by the office of the TRB, the jurisdiction shall submit a copy of all pertinent information from the record of the BBCA.

106.9.2. Decision of TRB: Procedures of the TRB are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the TRB shall be final if no appeal is made therefrom and the code official shall take action accordingly.]

SECTION ~~108.0~~ 107.0 . DEMOLITION OF BUILDINGS.

~~108.1~~ 107.1 . Procedures for demolition: Whenever a building is to be demolished pursuant to any provision of this code, the work shall be carried out in compliance with the requirements of Volume I of the USBC.

SECTION ~~109.0~~ 108.0 . SPECIAL PROVISIONS.

~~109.1~~ 108.1 . General: The provisions of this section contain requirements for improving the safety of certain buildings by requiring the installation of materials or equipment not originally required. Unless otherwise noted, these provisions shall apply equally to both pre- and post-USBC buildings.

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~~108.2~~ 108.2 . Hotels and motels: Existing hotels and motels shall comply with the provisions of this section.

~~108.2.1~~ 108.2.1 . Fire sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment (effective date March 1, 1990), for Use Group R-1, shall be installed throughout existing hotels and motels by either March 1, 1997, or within seven years of the date upon which an adequate water supply is made available to meet the needs of the suppression system, whichever is later.

Exceptions:

1. Hotels and motels that are equipped throughout with an automatic sprinkler system.
2. Hotels and motels which are three stories or less in height.

~~108.2.2~~ [108.2.2. Single and multiple station smoke detectors: Single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group R-1, shall be installed in existing hotels and motels .] by March 1, 1993.

[Exception: Hotels and motels that are equipped throughout with single and multiple station smoke detectors.]

~~108.3~~ 108.3 . Nursing homes and nursing facilities: Existing nursing homes and nursing facilities licensed by the Virginia Department of Health shall comply with the provisions of this section.

~~108.3.1~~ [108.3.1. Automatic sprinkler system: An automatic sprinkler system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment (effective date October 1, 1990), for Use Group I-2, shall be installed in existing nursing homes and nursing facilities] by January 1, 1993, [as follows:

1. NFPA 13D Standard for one story buildings.
2. NFPA 13R Standard for buildings two or three stories in height.
3. NFPA 13 Standard for buildings four or more stories in height.

Exceptions:

1. Nursing homes and nursing facilities which are equipped throughout with an automatic sprinkler system.
2. Nursing facilities consisting of certified long-term care beds located on the ground floor of general hospitals.]

~~108.3.1.1~~ [108.3.1.1. Quick response sprinklers; Quick response sprinklers shall be installed in patient sleeping rooms of buildings subject to Section 108.3.1.]

~~108.3.1.2~~ [108.3.1.2. Exceptions provided for: Buildings equipped throughout with an automatic fire sprinkler system meeting the requirements of NFPA 13 shall be permitted to use the exceptions provided in the USBC, Volume I, 1987 Edition, Third Amendment including, but not limited to, the following:

1. Section 502.3 (Area Increase)
2. Section 503.1 (Height Increase)
3. Section 610 (Use Group I-2 Areas)
4. Section 807 (Types and Location of Means of Egress)
5. Section 808 (Capacity of Egress Components)
6. Section 809 (Number of Exits)
7. Section 810 (Exit Access Passageways and Corridors)
8. Section 921 (Firestopping and Draftstopping)]

~~108.3.2~~ [~~108.3.1~~ 108.3.2]. Fire protective signaling system: A fire protective signaling system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

Exception: Nursing homes and nursing facilities that are equipped throughout with an automatic fire protective signaling system.

~~108.3.3~~ [~~108.3.2~~ 108.3.3]. Fire detection system: An automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, for Use Group I-2, shall be installed in existing nursing homes and nursing facilities by August 1, 1994.

~~108.3.3.1~~ [~~108.3.2.1~~ 108.3.3.1]. Fire detection system in existing sprinklered facilities: Nursing homes and nursing facilities that are exempt from Section [~~108.3.1~~ 108.3.1] because of an existing automatic sprinkler system shall install a fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Second Amendment, for Use Group I-2.

~~108.4~~ 108.4 . Homes for Adults: Existing Homes for Adults licensed by the Virginia Department of Social Services shall comply with this section.

~~108.4.1~~ 108.4.1 . Fire protective signaling system and fire detection system: A fire protective signaling system and an automatic fire detection system meeting the requirement

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of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

~~100.4.2~~ 108.4.2 . Single and multiple station smoke detectors: Battery or AC-powered single and multiple station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in Homes for Adults by August 1, 1994.

Exception: Homes for Adults that are equipped throughout with single and multiple station smoke detectors.

~~100.5.~~ [108.5. Identification of handicapped parking spaces: All spaces reserved for the use of handicapped persons shall be identified by an above grade sign with a bottom edge no lower than four feet nor higher than seven feet above the parking surface. Such signs shall be installed in accordance with applicable provisions of the current edition of Volume I of the USBC] by January 1, 1993 .

[108.6. Reserved.]

ADDENDUM 1.

AMENDMENTS TO THE BOCA NATIONAL PROPERTY MAINTENANCE CODE/ 1990 1993 EDITION.

As provided in Section 101.3 of Volume II - Building Maintenance Code of the 1990 1993 edition of the USBC, the amendments noted in this Addendum shall be made to the BOCA National Property Maintenance Code/ 1990 1993 edition for use as part of the Building Maintenance Code.

ARTICLE CHAPTER 1. ADMINISTRATION AND ENFORCEMENT.

(A) ~~Article Chapter 1~~, Administration and Enforcement, is deleted in its entirety and replaced with ~~Article Chapter 1~~ of the Building Maintenance Code.

ARTICLE CHAPTER 3. ENVIRONMENTAL REQUIREMENTS.

- (A) Delete Section ~~PM-301.1~~ PM-303.1 .
- (B) Delete Section ~~PM-301.4~~ PM-303.4 .
- (C) Delete Section ~~PM-301.5~~ PM-303.5 .
- (D) Delete Section ~~PM-301.8~~ PM-303.8 .

Note: The above sections of this code have been deleted because the agency's Attorney General representative advises that they cannot be interpreted as building regulations under the current language of § 36-97(7) of the Code of Virginia.

(E) Change Section ~~PM-302.1~~ PM-304.1 to read:

~~PM-302.1~~ PM-304.1 . General: The exterior of all structures, occupied, vacant or otherwise, shall be maintained in good repair, structurally sound and sanitary so as not to pose a threat to the public health, safety or welfare.

(F) Change Section ~~PM-302.12~~ PM-304.12 to read:

~~PM-302.12~~ PM-304.12 . Insect screens: During the period from April 1 to December 1 every door, window and other outside opening required for ventilation purposes serving any building containing habitable rooms, food preparation areas, food service areas, or any areas where products used in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screen doors shall not be required for out-swinging doors or other types of openings which make screening impractical, provided other approved means, such as air curtains or insect repellent fans are employed.

(G) Change Section ~~PM-303.4~~ PM-305.4 to read as follows:

~~PM-303.4~~ PM-305.4 . Lead-based paint: Interior and exterior painted surfaces of dwellings, child and day care facilities, including fences and outbuildings, that contain in excess of 0.5% lead by weight shall be removed or covered in an approved manner.

(H) Delete Section PM-306.2.

(I) Delete Section PM-306.3.

ARTICLE CHAPTER 4. LIGHT, VENTILATION AND SPACE REQUIREMENTS- OCCUPANCY LIMITATIONS .

(A) Change Section ~~PM-401.1~~ PM-403.1 to read:

~~PM-401.1~~ PM-403.1 . Habitable spaces: Every habitable space shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable space shall be 4.0% of the floor area of such room, except in kitchens when artificial light may be provided in accordance with the provisions of the building code. Whenever walls or other portions of a structure face a window of any other room and such obstructions are located less than three feet (914 mm) from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors nor to a court and shall not be included as

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contributing to the required minimum total window area for the room.

(B) Delete Section ~~PM-403.10~~ *PM-405.10* .

ARTICLE CHAPTER 6. MECHANICAL AND ELECTRICAL REQUIREMENTS.

(A) Change Section ~~PM-601.1~~ *PM-602.2* to read:

~~PM-601.1~~ *PM-602.2* . Residential buildings: Every owner and operator of any building who rents, leases or lets one or more dwelling unit, rooming unit, dormitory or guest room on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a room temperature of not less than 65°F (18°C) in all habitable rooms, bathrooms, and toilet rooms during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60°F (16°C) during other hours. ~~The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls.~~ When the outdoor temperature is below the outdoor design temperature required for the locality by the mechanical code listed in ~~Appendix A Chapter 8~~ , the owner or operator shall not be required to maintain the minimum room temperatures, provided the heating system is operating at full capacity, with supply valves and dampers in a full open position.

(B) Delete Sections *PM-602.2.1* and *PM-602.2.2* .

(B) (C) Change Section ~~PM-601.2~~ *PM-602.3* to read:

~~PM-601.2~~ *PM-602.3* . Nonresidential structures: Every owner of any structure who rents, leases, or lets the structure or any part thereof on terms, either express or implied, to furnish heat to the occupants thereof shall supply sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. ~~The temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls.~~

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

(C) (D) Add new Section ~~PM-603.3~~ *PM-606.3* to read:

~~PM-603.3~~ *PM-606.3* . Inspection: Routine and periodic inspections shall be performed in accordance with Part X of ASME A-17.1 listed in ~~Appendix A Chapter 8~~ .

ARTICLE CHAPTER 7. FIRE SAFETY REQUIREMENTS.

(a) Add new section ~~PM-704.5.2~~ *PM-705.5.4* .

~~PM-704.5.2~~ *PM-705.5.4* . Visual and audible alarms: Visual and audible alarms meeting the requirements of ANSI/UL Standard 1638 and ANSI/NFPA 72G shall be provided in occupancies housing the hard of hearing as required by § 36-99.5 of the Code of Virginia; however, all visual alarms shall provide a minimum intensity of 100 candela. Portable alarms meeting these requirements shall be accepted.

ARTICLE 8:

(A) Delete Section ~~PM-801.2~~ .

(B) Delete Section ~~PM-801.3~~ .

ARTICLE 9:

(A) Delete Article 9:

APPENDIX A CHAPTER 8. REFERENCED STANDARDS.

(A) Change Appendix A as follows:

1. (A) Delete standard reference number BOCA NBC 90 93 , BOCA National Building Code and substitute the Virginia Uniform Statewide Building Code, Volume I 1990 1993 edition.

2. (B) Delete standard reference number BOCA NFPC 90 93 , BOCA National Fire Prevention Code and substitute the Virginia Statewide Fire Prevention Code/ 1990 1993 Edition.

VA.R. Doc. No. R94-463; Filed January 11, 1994, 11:13 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

Title of Regulation: State Plan for Medical Assistance Relating to Nonenrolled Provider Reimbursement. VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates-Inpatient Hospital Care.

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

Effective Date: May 1, 1994.

Summary:

The purpose of this regulation is to reimburse out-of-state nonenrolled providers at amounts which are more consistent with the reimbursement amounts for in-state enrolled providers.

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 431.52 provides that the state must furnish Medicaid to recipients utilizing nonenrolled hospitals in several specific circumstances. Specifically, Medicaid must be furnished a recipient who is a resident of the state while that recipient is in another state, to the same extent that Medicaid is furnished to residents in the state, when:

1. Medical services are needed because of a medical emergency;
2. Medical services are needed because the recipient's health would be endangered if he were required to travel to his state of residence;
3. The state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; or
4. It is the general practice for recipients in a particular locality to use medical resources in another state.

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 5.0% 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, DMAS has determined that the excessive reimbursement could be eliminated through the imposition of a maximum reimbursement amount or cap. This amendment caps the reimbursement to nonenrolled providers. The cap is the DMAS 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.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850. There may be a charge for copies.

VR 460-02-4.1910. Methods and Standards for Establishing Payment Rates – Inpatient Hospital Care.

The state agency will pay the reasonable cost of inpatient hospital services provided under the Plan. In reimbursing hospitals for the cost of inpatient hospital services provided to recipients of medical assistance.

I. For each hospital also participating in the Health Insurance for the Aged Program under Title XVIII of the Social Security Act, the state agency will apply the same standards, cost reporting period, cost reimbursement principles, and method of cost apportionment currently used in computing reimbursement to such a hospital under Title XVIII of the Act, except that the inpatient routine services costs for medical assistance recipients will be determined subsequent to the application of the Title XVIII method of apportionment, and the calculation will exclude the applicable Title XVIII inpatient routing service charges or patient days as well as Title XVIII inpatient routine service cost.

II. For each hospital not participating in the Program under Title XVIII of the Act, the state agency will apply the standards and principles described in 42 CFR 447.250 and either (a) one of the available alternative cost apportionment methods in 42 CFR 447.250, or (b) the "Gross RCCAC method" of cost apportionment applied as follows: For a reporting period, the total allowable hospital inpatient charges; the resulting percentage is applied to the bill of each inpatient under the Medical Assistance Program.

III. For either participating or nonparticipating facilities, the Medical Assistance Program will pay no more in the aggregate for inpatient hospital services than the amount it is estimated would be paid for the services under the Medicare principles of reimbursement, as set forth in 42 CFR 447.253(b)(2), and/or lesser of reasonable cost or customary charges in 42 CFR 447.250.

IV. The state agency will apply the standards and principles as described in the state's reimbursement plan approved by the Secretary, HHS on a demonstration or experimental basis for the payment of reasonable costs by methods other than those described in § II (a) and (b) above.

V. The reimbursement system for hospitals includes the following components:

(1) Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural—0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban—0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

(2) Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for all hospitals in calendar year 1981. Individual

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hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia (DRI-V), as developed by Data Resources, Incorporated, determined in the quarter in which the

provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points (200 basis points) (DRI-V+2), to the then current allowance for inflation. The escalation factor shall be applied in accordance with the current inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method shall still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

(3) Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator.

(4) Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (Sec. 400), shall be considered as pass throughs and not part of the calculation.

(5) An incentive plan shall be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% of the difference between allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive shall be calculated based on the annual cost report.

The table below presents three examples under the new plan:

Group Ceiling	Hospital's Allowable Cost Per Day	Difference % of Ceiling	Sliding Scale Incentive % of Difference
	\$	%	\$

\$230	\$230	0	0	0	0
\$230	207	23.00	10%	2.30	10%
\$230	172	57.50	25%	14.38	25%
\$230	143	76.00	33%	19.00	25%

(6) There shall be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

(7) Disproportionate share hospitals defined.

The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

A. Criteria.

1. A Medicaid inpatient utilization rate in excess of 8.0% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

2. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

3. Subsection A 2 does not apply to a hospital:

a. At which the inpatients are predominantly individuals under 18 years of age; or

b. Which does not offer nonemergency obstetric services as of December 21, 1987.

B. Payment adjustment.

1. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One, consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the total number of Medicaid inpatient days by the number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% shall receive a disproportionate share payment adjustment.

2. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times 11, times (ii) the lower of the prospective

operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0%, times (ii) the lower of the prospective operating cost rate or ceiling.

(8) Outlier adjustments.

a. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

b. DMAS shall pay to disproportionate share hospitals (as defined in V (7) above) an outlier adjustment in payment amount for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

c. The outlier adjustment calculation.

(1) Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

(2) Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in (8) a or b above. Any hospital which qualifies for the extensive neonatal care provision (as governed by V (6) above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in (8) a or b above.

(3) Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in (8) c (2) above.

(4) DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

d. Pursuant to § 1 of Supplement 1 to Attachment 3.1 A & B, there is no limit on length of time for

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medically necessary stays for individuals under six years of age. This section provides that consistent with the EPSDT program referred to in 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.

VI. In accordance with Title 42 §§ 447.250 through 447.272 of the Code of Federal Regulations which implements § 1902(a)(13)(A) of the Social Security Act, the Department of Medical Assistance Services ("DMAS") establishes payment rates for services that are reasonable and adequate to meet the costs that shall be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws, regulations, and quality and safety standards. To establish these rates Virginia uses the Medicare principles of cost reimbursement in determining the allowable costs for Virginia's prospective payment system. Allowable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of changes in financial position, and footnotes to the financial statements;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Home office cost report, if applicable; and
6. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

Although utilizing the cost apportionment and cost finding methods of the Medicare Program, Virginia does not adopt the prospective payment system of the Medicare

Program enacted October 1, 1983.

VII. Revaluation of assets.

A. Effective October 1, 1984, the valuation of an asset of a hospital or long-term care facility which has undergone a change of ownership on or after July 18, 1984, shall be the lesser of the allowable acquisition cost to the owner of record as of July 18, 1984, or the acquisition cost to the new owner.

B. In the case of an asset not in existence as of July 18, 1984, the valuation of an asset of a hospital or long-term care facility shall be the lesser of the first owner of record, or the acquisition cost to the new owner.

C. In establishing an appropriate allowance for depreciation, interest on capital indebtedness, and return on equity (if applicable prior to July 1, 1986) the base to be used for such computations shall be limited to A or B above.

D. Costs (including legal fees, accounting and administrative costs, travel costs, and feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) shall be reimbursable only to the extent that they have not been previously reimbursed by Medicaid.

E. The recapture of depreciation up to the full value of the asset is required.

F. Rental charges in sale and leaseback agreements shall be restricted to the depreciation, mortgage interest and (if applicable prior to July 1, 1986) return on equity based on cost of ownership as determined in accordance with A and B above.

VIII. Refund of overpayments.

A. 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 review, field audit, or final settlement, DMAS shall promptly send the first demand letter requesting a lump sum refund. Recovery shall be undertaken even though the provider disputes in whole or in part DMAS's determination of the overpayment.

B. 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 also be used to reduce the remaining amount of the overpayment.

C. Payment schedule.

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

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

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

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

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

D. Extension request documentation.

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

E. Interest charge on extended repayment.

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

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

determination becomes final.

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

IX. Effective October 1, 1986, hospitals that have obtained Medicare certification as inpatient rehabilitation hospitals or rehabilitation units in acute care hospitals, which are exempted from the Medicare Prospective Payment System (DRG), shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding sections I, II, III, IV, V, VI, VII, VIII and excluding V(6). Additionally, rehabilitation hospitals and rehabilitation units of acute care hospitals which are exempt from the Medicare Prospective Payment System will be required to maintain separate cost accounting records, and to file separate cost reports annually utilizing the applicable Medicare cost reporting forms (HCFA 2552 series) and the Medicaid forms (MAP-783 series).

A new facility shall have an interim rate determined using a pro forma cost report or detailed budget prepared by the provider and accepted by the DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider will be held to the lesser of its actual operating cost or its peer group ceiling. Subsequent rates will be determined in accordance with the current Medicaid Prospective Payment System as noted in the preceding paragraph of IX.

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

XI. Pursuant to Item 389 E4 of the 1988 Appropriation Act (as amended), effective July 1, 1988, a separate group ceiling for allowable operating costs shall be established for state-owned university teaching hospitals.

XII. Nonenrolled providers.

A. Hospitals that are not enrolled as providers with the Department of Medical Assistance Services (DMAS) which

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submit claims shall be paid based on *the lesser of*:

1. The DMAS average reimbursable inpatient cost-to-charge ratio, updated annually on *September 30 of each year based on the most recent settled cost report*, for enrolled hospitals less 5.0%. (The 5.0% is for the cost of the additional manual processing of the claims.)

2. *The DMAS average per diem, updated annually on September 30 of each year based on the most recent settled cost report, of enrolled hospitals excluding the state-owned teaching hospitals and disproportionate share adjustments.*

B. Hospitals that are not enrolled shall submit claims using the required DMAS invoice formats. Such claims must be submitted within 12 months from date of services. A hospital is determined to regularly treat Virginia Medicaid recipients and shall be required by DMAS to enroll if it provides more than 500 days of care to Virginia Medicaid recipients during the hospitals' financial fiscal year. A hospital which is required by DMAS to enroll shall be reimbursed in accordance with the current Medicaid Prospective Payment System as described in the preceding Sections I, II, III, IV, V, VI, VII, VIII, IX, and X. The hospital shall be placed in one of the DMAS peer groupings which most nearly reflects its licensed bed size and location (Section V.(1) above). These hospitals shall be required to maintain separate cost accounting records, and to file separate cost reports annually, utilizing the applicable Medicare cost reporting forms, (HCFA 2552 Series) and the Medicaid forms (MAP-783 Series).

B. C. A newly enrolled facility shall have an interim rate determined using the provider's most recent filed Medicare cost report or a pro forma cost report or detailed budget prepared by the provider and accepted by DMAS, which represents its anticipated allowable cost for the first cost reporting period of participation. For the first cost reporting period, the provider shall be limited to the lesser of its actual operating costs or its peer group ceiling. Subsequent rates shall be determined in accordance with the current Medicaid Prospective Payment System as noted in ~~the preceding paragraph of XII.A~~ § XII B.

C. D. Once a hospital has obtained the enrolled status, 500 days of care, the hospital must agree to become enrolled as required by DMAS to receive reimbursement. This status shall continue during the entire term of the provider's current Medicare certification and subsequent recertification or until mutually terminated with 30 days written notice by either party. The provider must maintain this enrolled status to receive reimbursement. If an enrolled provider elects to terminate the enrolled agreement, the nonenrolled reimbursement status will not be available to the hospital for future reimbursement, except for emergency care.

D. E. Prior approval must be received from the DMAS

Health Services Review Division when a referral has been made for treatment to be received from a nonenrolled acute care facility (in-state or out-of-state), except in the case of an emergency or because medical resources or supplementary resources are more readily available in another state.

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

XIII. Payment Adjustment Fund. 1/1/92

A. A Payment Adjustment Fund shall be created in each of the Commonwealth's fiscal years during the period July 1, 1992, to June 30, 1996. The Payment Adjustment Fund shall consist of the Commonwealth's cumulative addition of \$5 million in general funds and its corresponding federal financial participation for reimbursement to nonstate-owned hospitals in each of the Commonwealth's fiscal years during this period. Each July 1, or as soon thereafter as is reasonably possible, the Commonwealth shall, through a single payment to each nonstate-owned hospital, equitably and fully disburse the Payment Adjustment Fund for that year.

B. In the absence of any amendment to the State Plan, Attachment 4.19A, for the Commonwealth's fiscal year after 1996, the Payment Adjustment Fund shall be continued at the level established in 1996 and shall be disbursed in accordance with the methodology described below.

C. The Payment Adjustment Funds shall be disbursed in accordance with the following methodology:

1. Identify each nonstate-owned hospital provider (acute, neonatal and rehabilitation) receiving payment based upon its peer group operating ceiling in May of each year.

2. For each such hospital identified in subdivision 1, identify its Medicaid paid days for the 12 months ending each May 31.

3. Multiply each such hospital's days under subdivision 2 by such hospital's May individual peer group ceiling (i.e, disregarding such hospital's actual fiscal year end ceiling) as adjusted by its then current disproportionate share factor.

4. Sum all hospital amounts determined in subdivision 3.

5. For each such hospital, divide its amount determined in subdivision 3 by the total of such amounts determined in subdivision 4. This then becomes the hospital adjustment factor ("HAF") for each such hospital.

6. Multiply each such hospital's HAF times the amount of the Payment Adjustment Fund ("PAF") to determine its potential PAF share.

7. Determine the unreimbursed Medicaid allowable operating cost per day for each such hospital in subdivision 1 for the most recent fiscal year on file at DMAS as of May 31, inflate such costs by DRI-V+2 from the midpoint of such cost report to May 31 and multiply such inflated costs per day by the days identified for that hospital in subdivision 2, creating the "unreimbursed amount."

8. Compare each such hospital's potential PAF share to its unreimbursed amount.

9. Allocate to all hospitals, where the potential PAF share exceeds the unreimbursed amount, such hospital's unreimbursed amount as its actual PAF share.

10. If the PAF is not exhausted, for those hospitals with an unreimbursed amount balance, recalculate a new HAF for each such hospital by dividing the hospital's HAF by the total of the HAFs for all hospitals with an unreimbursed amount balance.

11. Recompute each hospital's new potential share of the undisbursed PAF by multiplying such funds by each hospital's new HAF.

12. Compare each hospital's new potential PAF share to its unreimbursed amount. If the unreimbursed amounts exceed the PAF shares at all hospitals, each hospital's new PAF share becomes its actual PAF share. If some hospitals' unreimbursed amounts are less than the new potential PAF shares, allocate to such hospitals their unreimbursed amount as their actual PAF share. Then, for those hospitals with an unreimbursed amount balance, repeat steps 10, 11 and 12 until each hospital's actual PAF share is determined and the PAF is exhausted.

13. The annual payment to be made to each nonstate-owned hospital from the PAF shall be equal to their actual PAF share as determined and allocated above. Each hospital's actual PAF share payment shall be made on July 1, or as soon thereafter as is reasonably feasible.

NOTICE: The forms used in administering the Methods and Standards for Establishing Payment Rates - Inpatient Hospital Care 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 Department of Medical Assistance Services, 600 East Broad Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 910 Capitol Square, 2nd Floor, Room 262, Richmond, Virginia 23219.

COST REPORTING FORMS (MAP 783 SERIES)

Analysis of Interim Payments - Title XIX Services (Rev. 2/11/91).

Computation of Inpatient and Outpatient Ancillary Service Costs (Rev. 10/1/90).

Computation of Outpatient Capital Reduction (Rev. 10/1/90).

Computation of Title XIX Outpatient Costs (Rev. 10/1/90).

Computation of Charges for Lower of Cost or Charge Comparison (Rev. 10/1/90).

Computation of Title XIX Reimbursement Settlement (Rev. 10/1/90).

Determination of Plant Costs (Rev. 10/1/90).

Determination of Education Costs (Rev. 10/1/90).

Computation of Medicaid Plant and Education Cost (pass-throughs) (Rev. 10/1/90).

Computation of Net Medicaid Inpatient Operating Cost Adjustment (Rev. 10/1/90).

Calculation of Inpatient Profit Incentive and Disproportionate Share Adjustment (Rev. 10/1/90).

Disproportionate Share Reporting Form (Rev. 10/1/90).

Apportionment of Malpractice Insurance Cost (Rev. 10/1/90).

Calculations of Prospective Rate for Cost Reporting Year Ending — (Rev. 10/1/90).

MEDICARE COST REPORTING FORMS HCFA-2522

Supplemental Worksheet D-1, Parts I and II. Computation of Inpatient Operating Cost (12/85).

Supplemental Worksheet D-2, Part I. Apportionment of Cost of Services Rendered by Interns and Residents not in Approved Teaching Program (12/85).

V.A.R. Doc. No. R94-669; Filed March 2, 1994, 11:36 a.m.

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Title of Regulation: State Plan for Medical Assistance Relating to Case Management for the Elderly. VR 460-03-3.1102. Case Management Services (Supplement 2 to Attachment 3.1-A).

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

Effective Date: May 1, 1994.

Summary:

The amendment brings administrative utilization control requirements of the State Plan for Medical Assistance into conformity with requirements for the timing of client reassessments required by the Long-Term Care Council for the Case Management Pilot Programs.

The State Plan for Medical Assistance limits case management services for the elderly to no more than four months without preauthorization. At the point

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when the case manager identifies that a Medicaid eligible client will require more than four months of case management services, the case manager must request an extension of case management services from the department. The request must include an updated assessment of the client's needs and an indication of the reasons and extent of additional services.

The policy of the Long-Term Care Council requires that the case manager reassess the client's plan of care every six months. This disparity between the Medicaid requirements and those of the Long-Term Care Council is creating confusion and some extra work for the pilot programs. The Case Management Work Group, a group of professionals representing the Long-Term Care Council, and the pilot project staff have requested the Department of Medical Assistance Services to change the Medicaid requirement for reauthorization to a schedule of six months rather than four in order to bring the two policies into conformity. Such a change will not reduce the quality of care to the clients and should reduce unnecessary paper work. This regulatory change will implement the requested modification in Medicaid regulations.

During FY 93, 743 Medicaid eligible individuals received case management services through the pilot program. Requests for extension beyond the initial four months of service were received on approximately 25% of those recipients. Most requests for extension were approved. A probable increase in utilization as a result of this regulation is expected to be within the limits of the current funding provided specifically for this project. However, it is anticipated that some savings in administrative costs to the pilot agencies which is paid through the state-funded grant from the Long-Term Care Council will result from the reduction in paperwork and duplicative work of requesting extensions on a separate time schedule from the required reassessments.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from Victoria P. Simmons, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850. There may be a charge for copies.

VR 460-03-3.1102. Case Management Services.

§ 1. High risk pregnant women and children.

A. Target group.

To reimburse case management services for high-risk Medicaid eligible pregnant women and children up to age two.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

The case management services will provide maternal and child health coordination to minimize fragmentation of care, reduce barriers, and link clients with appropriate services to ensure comprehensive, continuous health care. The Maternity Care Coordinator will provide:

1. Assessment. Determining clients' service needs, which include psychosocial, nutrition, medical, and educational factors.
2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.
3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.
4. Follow-up and monitoring. Assessing ongoing progress and ensuring services are delivered.
5. Education and counseling. Guiding the client and developing a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Any duly enrolled provider which the department determines is qualified who has signed an agreement with Department of Medical Assistance Services to deliver Maternity Care Coordination services. Qualified service providers will provide case management regardless of their capacity to provide any other services under the Plan. A Maternity Care Coordinator is the Registered Nurse or Social Worker employed by a qualified service provider who provides care coordination services to eligible clients. The RN must be licensed in Virginia and should have a minimum of one year of experience in community health nursing and experience in working with pregnant women. The Social Worker (MSW, BSW) must

have a minimum of one year of experience in health and human services, and have experience in working with pregnant women and their families. The Maternity Care Coordinator assists clients in accessing the health care and social service system in order that outcomes which contribute to physical and emotional health and wellness can be obtained.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 2. Seriously mentally ill adults and emotionally disturbed children.

A. Target Group.

The Medicaid eligible individual shall meet the DMHMRSAS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, significant others, service providers, and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to 30 days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

Services are provided in accordance with section 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the individualized service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and use vocational, civic, and recreational services;

6. Making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and individuals with serious/chronic mental illness to the Community Services Boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

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2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider of the services must meet certain criteria. These criteria shall be:

- a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
- b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
- c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
- d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
- e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
- f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

- (1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;
- (2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;
- (3) Different types of assessments, including functional assessment, and their uses in service planning;
- (4) Consumers' rights;
- (5) Local community resources and service delivery systems, including support services (e.g. housing,

financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);

- (6) Types of mental health programs and services;
- (7) Effective oral, written and interpersonal communication; principles and techniques;
- (8) General principles of record documentation; and
- (9) The service planning process and major components of a service plan.

b. Skills in:

- (1) Interviewing;
- (2) Observing, recording and reporting on an individual's functioning;
- (3) Identifying and documenting a consumer's needs for resources, services and other supports;
- (4) Using information from assessments, evaluations, observation and interviews to develop service plans;
- (5) Identifying services within the community and established service system to meet the individual's needs;
- (6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances ;
- (7) Negotiating with consumers and service providers;
- (8) Coordinating the provision of services by diverse public; and private providers;
- (9) Identifying community resources and organizations and coordinating resources and activities; and
- (10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

- (1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);

- (2) Be persistent and remain objective;
- (3) Work as a team member, maintaining effective inter- and intra-agency working relationships;
- (4) Work independently, performing position duties under general supervision;
- (5) Communicate effectively, verbally and in writing; and
- (6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 3. Youth at risk of serious emotional disturbance.

A. Target Group.

Medicaid eligible individuals who meet the DMHMRSAS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of

section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist youth at risk of serious emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;
2. Linking the individual directly to services and supports specified in the treatment/services plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;
6. Making collateral contacts which are nontherapy contacts with an individual's significant others to promote treatment or community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet certain criteria. These criteria shall be:
- a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

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b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

2. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments, including functional assessment, and their uses in service planning;

(4) Consumer's rights;

(5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);

(6) Types of mental health programs and services;

(7) Effective oral, written and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Observing, recording and reporting on an individual's functioning;

(3) Identifying and documenting a consumer's needs for resources, services and other supports;

(4) Using information from assessments, evaluations, observation and interviews to develop service plans;

(5) Identifying services within the community and established service system to meet the individual's needs;

(6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances;

(7) Negotiating with consumers and service providers;

(8) Coordinating the provision of services by diverse public and private providers;

(9) Identifying community resources and organizations and coordinating resources and activities; and

(10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 4. Individuals with mental retardation.

A. Target group.

Medicaid eligible individuals who are mentally retarded as defined in state law.

1. An active client for mental retardation case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a minimum of one face-to-face contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals be billed for no more than two predischarge periods in twelve months.

B. Areas of state in which services will be provided:

Entire state.

Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than statewide:

C. Comparability of services.

Services are provided in accordance with section 1902(a)(10)(B) of the Act.

Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation services to be provided include:

1. Assessment and planning services, to include developing a consumer service plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the consumer service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;

7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

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b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments and their uses in program planning;

(4) Consumers' rights;

(5) Local community resources and service delivery systems, including support services, eligibility criteria and intake process, termination criteria and procedures and generic community resources;

(6) Types of mental retardation programs and services;

(7) Effective oral, written and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Negotiating with consumers and service providers;

(3) Observing, recording and reporting behaviors;

(4) Identifying and documenting a consumer's needs for resources, services and other assistance;

(5) Identifying services within the established service system to meet the consumer's needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Using information from assessments, evaluations, observation and interviews to develop service plans;

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation;

(9) Using assessment tools; and

(10) Identifying community resources and organizations and coordinating resources and activities.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental retardation, respecting consumers' and families' privacy, believing consumers can grow);

(2) Be persistent and remain objective;

(3) Work as team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case

management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 5. Individuals with mental retardation and related conditions who are participants in the home and community-based care waivers for persons with mental retardation and related conditions.

A. Target group.

Medicaid eligible individuals with mental retardation and related conditions, or a child under six years of age who is at developmental risk, who have been determined to be eligible for home and community based care waiver services for persons with mental retardation and related conditions. An active client for waiver case management shall mean an individual who receives a minimum of one face-to-face contact every two months and monthly on-going case management interactions. There shall be no maximum service limits for case management services. Case management services must be preauthorized by DMAS after review and recommendation by the care coordinator employed by DMHMRSAS and verification of waiver eligibility.

B. Areas of state in which services will be provided:

- Entire State
- Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation case management services to be provided include:

1. Assessment and planning services to include

developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the consumer service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;
6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guide the client and develop a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the community services boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

- a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
- b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individuals' ability to pay or eligibility for Medicaid reimbursement;
- c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
- d. The provider shall have the ability to document

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and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities at the entry level. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation,

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination,

(3) Different types of assessments and their uses in program planning,

(4) Consumers' rights,

(5) Local service delivery systems, including support services,

(6) Types of mental retardation programs and services.

(7) Effective oral, written and interpersonal communication principles and techniques,

(8) General principles of record documentation, and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing,

(2) Negotiating with consumers and service providers,

(3) Observing, recording and reporting behaviors,

(4) Identifying and documenting a consumer's needs for resources, services and other assistance,

(5) Identifying services within the established service system to meet the consumer's needs,

(6) Coordinating the provision of services by diverse public and private providers,

(7) Analyzing and planning for the service needs of mentally retarded persons,

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation, and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g., treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally retarded people, respecting consumers' and families' privacy, believing consumers can grow),

(2) Be persistent and remain objective,

(3) Work as team member, maintaining effective interagency and intraagency working relationships,

(4) Work independently, performing position duties under general supervision,

(5) Communicate effectively, verbally and in writing, and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 6. Case management for the elderly.

A. Target group.

Persons age 60 and over who have been screened through a Case Management Pilot Project approved by the Long-Term Care Council and found to be dependent in two or more of the following activities of daily living: (i) bathing, (ii) dressing, (iii) toileting, (iv) transferring, (v) continence, or (vi) eating.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of § 1915(g)(1)) of the Act is invoked to provide services less than statewide:
 - a. Fairfax County and the cities of Falls Church and Fairfax;
 - b. Planning Districts 1, 2, 3 (except for Washington County and the City of Bristol), 4, 17, 18, 20, 21, 22.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

1. Assessment. Determining client's service needs, which include psychosocial, nutritional and medical.
2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.
3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.
4. Follow-up and monitoring. Assessing ongoing progress, ensuring services are delivered, and periodically reassessing need to determine appropriate revisions to the case management plan of care.

E. Qualifications of providers.

To qualify as a provider of case management for the elderly, the provider of services must ensure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The case manager must have these knowledge, skills, and abilities at the entry level which must be

documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

1. Knowledge of:

- a. Aging and the impact of disabilities and illnesses on aging;
- b. Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;
- c. Interviewing techniques;
- d. Consumers' rights;
- e. Local human and health service delivery systems, including support services and public benefits eligibility requirements;
- f. The principles of human behavior and interpersonal relationships;
- g. Effective oral, written, and interpersonal communication principles and techniques;
- h. General principles of record documentation;
- i. Service planning process and the major components of a service plan.

2. Skills in:

- a. Negotiating with consumers and service providers;
- b. Observing, recording and reporting behaviors;
- c. Identifying and documenting a consumer's needs for resources, services and other assistance;
- d. Identifying services within the established services system to meet the consumer's needs;
- e. Coordinating the provision of services by diverse public and private providers;
- f. Analyzing and planning for the service needs of elderly persons.

3. Abilities to:

- a. Demonstrate a positive regard for consumers and their families;
- b. Be persistent and remain objective;
- c. Work as a team member, maintaining effective inter- and intra-agency working relationships;
- d. Work independently, performing position duties

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under general supervision;

e. Communicate effectively, verbally and in writing.

f. Develop a rapport and to communicate with different types of persons from diverse cultural backgrounds;

g. Interview.

4. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field or be a licensed nurse. In addition, it is preferable that the case manager have two years of satisfactory experience in the human services field working with the elderly.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services to the elderly shall be limited to no more than ~~four~~ six months without authorization from the Department of Medical Assistance Services.

VA.R. Doc. No. R94-622; Filed February 25, 1994, 10:19 a.m.

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REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. 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.

Due to the length, only the amended page of VR 460-02-2.6100:1, Eligibility Conditions and Requirements, is being published; however, a summary is being published in lieu of 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: State Plan for Medical Assistance Relating to Technical Amendment Concerning Protection of Nursing Facility Residents' Personal Fund Accounts; Transfer of Resources.

VR 460-01-24:1. Amount, Duration and Scope of Services (§ 3.1(c)).

VR 460-02-2.6100:1. Eligibility Conditions and Requirements.

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: April 20, 1994.

Summary:

The purpose of this action is to amend the Plan for Medical Assistance incorporating a new federally-issued preprinted page and to reference an existing policy elsewhere in the plan.

The sections of the State Plan affected by this action are § 3.1, Amount, Duration, and Scope of Services (preprint page 24, VR 460-01-24:1), and Eligibility Conditions and Requirements, Attachment 2.6-A (page 13, VR 460-02-2.6100:1).

HCFA issued Program Memorandum 93-8 on December 15, 1993, which required the submission of the revised preprinted page 24. HCFA revised this page to conform to the requirements of the Social Security Act § 1902(a)(29)(B) and Title 42 of the Code of Federal Regulations § 483.10(c)(8)(i). This section of law requires states to include in payment for nursing facility services at least certain items and services specified by the Secretary of the U.S. Department of Health and Human Services. The federal regulations were effective October 1, 1993. Since DMAS' reimbursement policies already complied with this requirement, DMAS simply reminded its nursing facility providers of the policy via a Medicaid Memo, dated September 1, 1993.

DMAS submitted State Plan Amendment 93-29, Transfer of Assets and Treatment of Certain Trusts, to HCFA on December 28, 1993. DMAS had adopted this final exempt regulation on November 29, 1993, consistent with the requirements of the Administrative Process Act. HCFA advises that it is approving this State Plan Amendment but recommends the addition of language in Attachment 2.6-A, beneath the previous trust policy language, which records the existence of the new policy effective August 11, 1993, and directs the user to the appropriate supplement for the details.

Since both of the changes discussed here are technical changes and no policy changes are being made, there

are no new issues involved.

Because these are technical changes which effect no policy changes, there is no impact on the number of persons affected or on projected costs.

VR 460-01-24:1. Amount, Duration and Scope of Services (§ 3.1(c)).

Citation: 42 CFR 431.53

§ 3.1 Amount, Duration, and Scope of Services (continued).

(c) (1) Assurance of transportation. Provision is made for assuring necessary transportation of recipients to and from providers. Methods used to assure such transportation are described in Attachment 3.1-D.

Citation: 42 CFR 483.10

(c)(2) Payment for nursing facility services. The state includes in nursing facility services at least the items and services specified in 42 CFR 483.10(c)(8)(i).

VR 460-02-2.6100:1. Eligibility Conditions and Requirements.

Citation: 1902(k) of the Act

2. Medicaid qualifying trusts. In the case of a Medicaid qualifying trust described in § 1902(k)(2) of the Act, the amount from the trust that is deemed available to the individual who established the trust (or whose spouse established the trust) is the maximum amount that the trustee(s) is permitted under the trust to distribute to the individual. This amount is deemed available to the individual, whether or not the distribution is actually made. This provision does not apply to any trust or initial trust decree established before April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.

The agency does not count the funds in a trust as described above in any instance where the state determines that it would work an undue hardship. Supplement 10 of Attachment 2.6-A specifies what constitutes an undue hardship.

The policy for qualifying trusts which is effective for trusts established or assets disposed of after August 10, 1993, is located in Supplement 9.

Citation: 1902(a)(10) of the Act

3. Medically needy income levels (MNILs) are based on family size. Supplement 1 to Attachment 2.6-A specifies the MNILs for all covered medically needy groups. If the agency chooses more restrictive levels under § 1902(f) of the Act, Supplement 1 so indicates.

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Title of Regulation: VR 460-03-3.1100. Amount, Duration and Scope of Services.
VR 460-03-3.1102. Case Management Services.
VR 460-04-8.12. Regulations for Home and Community-Based Care Services for Individuals with Mental Retardation.
VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services.

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

Effective Date: April 20, 1994.

Summary:

The purpose of this amendment is to promulgate permanent regulations that 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 permanent regulations will supersede emergency regulations which became effective June 29, 1993.

The 1990 Appropriations Act (Item 466) directed the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) and the Department of Medical Assistance Services (DMAS) to provide Medicaid coverage for community mental health and mental retardation services in the Commonwealth. Final regulations were promulgated in 1992 which provided coverage for numerous Medicaid services for persons with mental retardation and mental illness through State Plan services and waiver services. The former Secretary of Health and Human Resources directed agencies to simplify procedures and reduce paperwork to more efficiently and effectively administer services to recipients. Staff at both agencies, working with the MR Executive Workgroup comprised of providers, local community service boards, and consumer representatives identified areas which have caused problems in the administration of services to persons with mental retardation and mental illness. Previous regulations governing community mental retardation services restricted Medicaid reimbursement of providers of these services to those licensed by DMHMRSAS. Previous regulations governing the MR waiver services already included DRS habilitative providers as qualified to provide MR waiver services, but not to treat recipients of community mental retardation services.

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The emergency regulations broadened the provider qualifications for persons with related conditions to include those providers contracted by DRS as habilitative services 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.

These permanent regulations 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. The definitions of the services and provider qualifications have been developed in conjunction with the MR Executive Workgroup comprised of providers, local community services boards, and consumer representatives 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.

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 Victoria P. Simmons, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8850. There may be a charge for copies.

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.

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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.

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 ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services.

Not provided.

D. Other practitioners' services.

1. Clinical psychologists' services.

a. These limitations apply to psychotherapy sessions by clinical psychologists licensed by the State Board of Medicine 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

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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. 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.

§ 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

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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, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service within a 60-day period. A recipient may receive a maximum of 48 visits annually without authorization. The provider shall maintain documentatio

to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. This request must be signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, 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 anorexiants 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

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§ 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.

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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~~ *780 units*, 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~~ *780 units*, 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~~ *936 units*, 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~~ *780 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:

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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 sanatoria.

Provided, no limitations.

21d. Skilled nursing facility services for patients under 21 years of age.

Provided, no limitations.

21e. Emergency hospital services.

Provided, no limitations.

21f. Personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

Not provided.

§ 22. Emergency Services for Aliens.

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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 460-03-3.1102. Case Management Services.

§ 1. High risk pregnant women and children.

A. Target group.

To reimburse case management services for high-risk Medicaid eligible pregnant women and children up to age two.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

The case management services will provide maternal and child health coordination to minimize fragmentation of care, reduce barriers, and link clients with appropriate services to ensure comprehensive, continuous health care. The Maternity Care Coordinator will provide:

1. Assessment. Determining clients' service needs, which include psychosocial, nutrition, medical, and educational factors.
2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.
3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.
4. Follow-up and monitoring. Assessing ongoing progress and ensuring services are delivered.
5. Education and counseling. Guiding the client and developing a supportive relationship that promotes the service plan.

E. Qualifications of providers.

Any duly enrolled provider which the department determines is qualified who has signed an agreement with Department of Medical Assistance Services to deliver Maternity Care Coordination services. Qualified service providers will provide case management regardless of their capacity to provide any other services under the Plan. A Maternity Care Coordinator is the Registered Nurse or Social Worker employed by a qualified service provider who provides care coordination services to eligible clients. The RN must be licensed in Virginia and should have a minimum of one year of experience in community health nursing and experience in working with pregnant women. The Social Worker (MSW, BSW) must have a minimum of one year of experience in health and human services, and have experience in working with pregnant women and their families. The Maternity Care Coordinator assists clients in accessing the health care and social service system in order that outcomes which contribute to physical and emotional health and wellness can be obtained.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 2. Seriously mentally ill adults and emotionally disturbed children.

A. Target Group.

The Medicaid eligible individual shall meet the DMHMRSAS definition for "serious mental illness," or "serious emotional disturbance in children and adolescents."

1. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, significant others, service providers, and others including a ~~minimum of at least one~~ face-to-face contact ~~within a 90-day period every 90 days~~. Billing can be submitted *for an active client* only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to 30 days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two pre-discharge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist individual children and adults, in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include

developing an Individual Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the individualized service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills and use vocational, civic, and recreational services;

6. Making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment;

7. Follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and individuals with serious/chronic mental illness to the Community Services Boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental health case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

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d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

3. Providers may bill Medicaid for mental health case management only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments, including functional assessment, and their uses in service planning;

(4) Consumers' rights;

(5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);

(6) Types of mental health programs and services;

(7) Effective oral, written and interpersonal communication; principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Observing, recording and reporting on an individual's functioning;

(3) Identifying and documenting a consumer's needs for resources, services and other supports;

(4) Using information from assessments, evaluations, observation and interviews to develop service plans;

(5) Identifying services within the community and established service system to meet the individual's needs;

(6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances;

(7) Negotiating with consumers and service providers;

(8) Coordinating the provision of services by diverse public; and private providers;

(9) Identifying community resources and organizations and coordinating resources and activities; and

(10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the

Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 3. Youth at risk of serious emotional disturbance.

A. Target Group.

Medicaid eligible individuals who meet the DMHMRSAS definition of youth at risk of serious emotional disturbance.

1. An active client shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a ~~minimum~~ of at least one face-to-face contact ~~within a 90-day period every 90 days~~. Billing can be submitted for an active client only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than Statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services; mental health services.

Case management services assist youth at risk of serious

emotional disturbance in accessing needed medical, psychiatric, social, educational, vocational, and other supports essential to meeting basic needs. Services to be provided include:

1. Assessment and planning services, to include developing an Individual Service Plan;
2. Linking the individual directly to services and supports specified in the treatment/services plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services and service planning with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services;
6. Making collateral contacts which are nontherapy contacts with an individual's significant others to promote treatment or community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. To qualify as a provider of case management services to youth at risk of serious emotional disturbance, the provider of the services must meet certain criteria. These criteria shall be:
 - a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
 - b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
 - c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
 - d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
 - e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental

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Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental health case management agency by the DMHMRSAS.

2. Providers may bill Medicaid for mental health case management to youth at risk of serious emotional disturbance only when the services are provided by qualified mental health case managers. The case manager shall possess a combination of mental health work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The nature of serious mental illness in adults and serious emotional disturbance in children and adolescents;

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;

(3) Different types of assessments, including functional assessment, and their uses in service planning;

(4) Consumer's rights;

(5) Local community resources and service delivery systems, including support services (e.g. housing, financial, social welfare, dental, educational, transportation, communication, recreational, vocational, legal/advocacy), eligibility criteria and intake processes, termination criteria and procedures, and generic community resources (e.g. churches, clubs, self-help groups);

(6) Types of mental health programs and services;

(7) Effective oral, written and interpersonal communication principles and techniques;

(8) General principles of record documentation; and

(9) The service planning process and major components of a service plan.

b. Skills in:

(1) Interviewing;

(2) Observing, recording and reporting on an

individual's functioning;

(3) Identifying and documenting a consumer's needs for resources, services and other supports;

(4) Using information from assessments, evaluations, observation and interviews to develop service plans;

(5) Identifying services within the community and established service system to meet the individual's needs;

(6) Formulating, writing and implementing individualized service plans to promote goal attainment for persons with serious mental illness and emotional disturbances;

(7) Negotiating with consumers and service providers;

(8) Coordinating the provision of services by diverse public and private providers;

(9) Identifying community resources and organizations and coordinating resources and activities; and

(10) Using assessment tools (e.g. level of function scale, life profile scale).

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental illness, respecting consumers' and families' privacy, believing consumers are valuable members of society);

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing; and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 4. Individuals with mental retardation.

A. Target group.

Medicaid eligible individuals who are mentally retarded as defined in state law.

1. An active client for mental retardation case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and others including a ~~minimum of~~ *at least one face-to-face contact within a 90-day period every 90 days*. Billing can be submitted *for an active client* only for months in which direct or client-related contacts, activity or communications occur.

2. There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to thirty days immediately preceding discharge. Case management for institutionalized individuals *may* be billed for no more than two predischarge periods in 12 months.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of section 1915(g)(1) of the Act is invoked to provide services less than statewide:

C. Comparability of services.

- Services are provided in accordance with section 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of section 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of section 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation services to be provided include:

1. Assessment and planning services, to include developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);

2. Linking the individual to services and supports specified in the consumer service plan;

3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;

4. Coordinating services and service planning with other agencies and providers involved with the individual;

5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;

6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;

7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and

8. Education and counseling which guides the client and develops a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the Community Services Boards only to enable them to provide services to serious/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.

2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;

b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;

c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

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e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities. The incumbent shall have at entry level the following knowledge, skills and abilities. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

- (1) The definition, causes and program philosophy of mental retardation;
- (2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination;
- (3) Different types of assessments and their uses in program planning;
- (4) Consumers' rights;
- (5) Local community resources and service delivery systems, including support services, eligibility criteria and intake process, termination criteria and procedures and generic community resources;
- (6) Types of mental retardation programs and services;
- (7) Effective oral, written and interpersonal communication principles and techniques;
- (8) General principles of record documentation; and
- (9) The service planning process and the major components of a service plan.

b. Skills in:

- (1) Interviewing;
- (2) Negotiating with consumers and service providers;

(3) Observing, recording and reporting behaviors;

(4) Identifying and documenting a consumer's needs for resources, services and other assistance;

(5) Identifying services within the established service system to meet the consumer's needs;

(6) Coordinating the provision of services by diverse public and private providers;

(7) Using information from assessments, evaluations, observation and interviews to develop service plans;

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation;

(9) Using assessment tools; and

(10) Identifying community resources and organizations and community resources and activities.

c. Abilities to:

- (1) Demonstrate a positive regard for consumers and their families (e.g. treating consumers as individuals, allowing risk taking, avoiding stereotypes of people with mental retardation, respecting consumers' and families' privacy, believing consumers can grow);
- (2) Be persistent and remain objective;
- (3) Work as team member, maintaining effective inter- and intra-agency working relationships;
- (4) Work independently, performing position duties under general supervision;
- (5) Communicate effectively, verbally and in writing; and
- (6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.
2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies'

or private entities under other program authorities for this same purpose.

§ 5. Individuals with mental retardation and related conditions who are participants in the home and community-based care waivers for persons with mental retardation and related conditions.

A. Target group.

Medicaid eligible individuals with mental retardation and related conditions, or a child under six years of age who is at developmental risk, who have been determined to be eligible for home and community based care waiver services for persons with mental retardation and related conditions.

1. An active client for waiver case management shall mean an individual who receives a ~~minimum of at least one face-to-face contact every two months~~ 90 days and monthly on-going case management interactions. There shall be no maximum service limits for case management services. Case management services ~~must be preauthorized by DMAS after review and recommendation by the care coordinator employed by DMHMRSAS and verification of waiver eligibility may be initiated up to three months prior to the start of waiver services, unless the individual is institutionalized.~~

2. *There shall be no maximum service limits for case management services except case management services for individuals residing in institutions or medical facilities. For these individuals, reimbursement for case management shall be limited to 30 days immediately preceding discharge. Case management for institutionalized individuals may be billed for no more than two pre-discharge periods in 12 months.*

B. Areas of state in which services will be provided:

- Entire State
- Only in the following geographic areas (authority of § 1915(g)(1) of the Act is invoked to provide services less than statewide.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

Mental retardation case management services to be provided include:

1. Assessment and planning services to include developing a Consumer Service Plan (does not include performing medical and psychiatric assessment but does include referral for such assessment);
2. Linking the individual to services and supports specified in the consumer service plan;
3. Assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources;
4. Coordinating services with other agencies and providers involved with the individual;
5. Enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic and recreational services;
6. Making collateral contacts with the individual's significant others to promote implementation of the service plan and community adjustment;
7. Following-up and monitoring to assess ongoing progress and ensuring services are delivered; and
8. Education and counseling which guide the client and develop a supportive relationship that promotes the service plan.

E. Qualifications of providers.

1. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to limit case management providers for individuals with mental retardation and serious/chronic mental illness to the community services boards only to enable them to provide services to seriously/chronically mentally ill or mentally retarded individuals without regard to the requirements of § 1902(a)(10)(B) of the Act.
2. To qualify as a provider of services through DMAS for rehabilitative mental retardation case management, the provider of the services must meet certain criteria. These criteria shall be:

- a. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
- b. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individuals' ability to pay or eligibility for Medicaid reimbursement;
- c. The provider shall have the administrative and financial management capacity to meet state and federal requirements;

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d. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;

e. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and

f. The provider shall be certified as a mental retardation case management agency by the DMHMRSAS.

3. Providers may bill for Medicaid mental retardation case management only when the services are provided by qualified mental retardation case managers. The case manager shall possess a combination of mental retardation work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and abilities at the entry level. These shall be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

a. Knowledge of:

(1) The definition, causes and program philosophy of mental retardation,

(2) Treatment modalities and intervention techniques, such as behavior management, independent living skills training, supportive counseling, family education, crisis intervention, discharge planning and service coordination,

(3) Different types of assessments and their uses in program planning,

(4) Consumers' rights,

(5) Local service delivery systems, including support services,

(6) Types of mental retardation programs and services.

(7) Effective oral, written and interpersonal communication principles and techniques,

(8) General principles of record documentation, and

(9) The service planning process and the major components of a service plan.

b. Skills in:

(1) Interviewing,

(2) Negotiating with consumers and service providers,

(3) Observing, recording and reporting behaviors,

(4) Identifying and documenting a consumer's needs for resources, services and other assistance,

(5) Identifying services within the established service system to meet the consumer's needs,

(6) Coordinating the provision of services by diverse public and private providers,

(7) Analyzing and planning for the service needs of mentally retarded persons,

(8) Formulating, writing and implementing individualized consumer service plans to promote goal attainment for individuals with mental retardation, and

(9) Using assessment tools.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families (e.g., treating consumers as individuals, allowing risk taking, avoiding stereotypes of mentally retarded people, respecting consumers' and families' privacy, believing consumers can grow),

(2) Be persistent and remain objective,

(3) Work as team member, maintaining effective interagency and intraagency working relationships,

(4) Work independently, performing position duties under general supervision,

(5) Communicate effectively, verbally and in writing, and

(6) Establish and maintain ongoing supportive relationships.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

§ 6. Case management for the elderly.

A. Target group.

Persons age 60 and over who have been screened through a Case Management Pilot Project approved by the Long-Term Care Council and found to be dependent in two or more of the following activities of daily living: (i) bathing, (ii) dressing, (iii) toileting, (iv) transferring, (v) continence, or (vi) eating.

B. Areas of state in which services will be provided:

- Entire state.
- Only in the following geographic areas (authority of § 1915(g)(1)) of the Act is invoked to provide services less than statewide:
 - a. Fairfax County and the cities of Falls Church and Fairfax;
 - b. Planning Districts 1, 2, 3 (except for Washington County and the City of Bristol), 4, 17, 18, 20, 21, 22.

C. Comparability of services.

- Services are provided in accordance with § 1902(a)(10)(B) of the Act.
- Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services.

1. Assessment. Determining client's service needs, which include psychosocial, nutritional and medical.
2. Service planning. Developing an individualized description of what services and resources are needed to meet the service needs of the client and help access those resources.
3. Coordination and referral. Assisting the client in arranging for appropriate services and ensuring continuity of care.
4. Follow-up and monitoring. Assessing ongoing progress, ensuring services are delivered, and periodically reassessing need to determine appropriate revisions to the case management plan of care.

E. Qualifications of providers.

To qualify as a provider of case management for the elderly, the provider of services must ensure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience or relevant education which indicates that the individual possesses the following knowledge, skills, and

abilities. The case manager must have these knowledge, skills, and abilities at the entry level which must be documented or observable in the application form or supporting documentation or in the interview (with appropriate documentation).

1. Knowledge of:

- a. Aging and the impact of disabilities and illnesses on aging;
- b. Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;
- c. Interviewing techniques;
- d. Consumers' rights;
- e. Local human and health service delivery systems, including support services and public benefits eligibility requirements;
- f. The principles of human behavior and interpersonal relationships;
- g. Effective oral, written, and interpersonal communication principles and techniques;
- h. General principles of record documentation;
- i. Service planning process and the major components of a service plan.

2. Skills in:

- a. Negotiating with consumers and service providers;
- b. Observing, recording and reporting behaviors;
- c. Identifying and documenting a consumer's needs for resources, services and other assistance;
- d. Identifying services within the established services system to meet the consumer's needs;
- e. Coordinating the provision of services by diverse public and private providers;
- f. Analyzing and planning for the service needs of elderly persons.

3. Abilities to:

- a. Demonstrate a positive regard for consumers and their families;
- b. Be persistent and remain objective;
- c. Work as a team member, maintaining effective inter- and intra-agency working relationships;

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d. Work independently, performing position duties under general supervision;

e. Communicate effectively, verbally and in writing.

f. Develop a rapport and to communicate with different types of persons from diverse cultural backgrounds;

g. Interview.

4. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field or be a licensed nurse. In addition, it is preferable that the case manager have two years of satisfactory experience in the human services field working with the elderly.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

H. Case management services to the elderly shall be limited to no more than four months without authorization from the Department of Medical Assistance Services.

VR 460-04-8.12. Regulations for Home and Community-Based Care Services for Individuals with Mental Retardation.

§ 1. Definitions.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to communicate with the environment in which they live or which are necessary to the proper functioning of such items.

"Care coordinators" means persons community resource consultants employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services to perform utilization review, recommendation of preauthorization for service type and intensity, and review of individual level of care criteria.

"Case management" means the assessment, planning, linking and monitoring for individuals referred for mental retardation community-based care waiver services. Case management (i) ensures the development, coordination, implementation, monitoring, and modification of the individual service plan; (ii) links the individual with appropriate community resources and supports; (iii) coordinates service providers; and (iii) monitors quality of care.

"Case managers" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Community based care waiver services" or "waiver services" means the range of community support services approved by the Health Care Financing Administration pursuant to § 1915(c) of the Social Security Act to be offered to mentally retarded and developmentally disabled individuals who would otherwise require the level of care provided in a nursing facility for the mentally retarded.

"Community services board" or "CSB" means the public organization authorized by the Code of Virginia to provide services to individuals with mental illness or retardation, operating autonomously but in partnership with the DMHMRSAS.

"Consumer Service Plan" or "CSP" means that document addressing the needs of the recipient of home and community-based care mental retardation services, in all life areas. The Individual Service Plans developed by service providers are to be incorporated in the CSP by the case manager. Factors to be considered when this plan is developed may include, but are not limited to, the recipient's age, primary disability, and level of functioning.

"DMAS" means the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self-care, physical development, and transportation to and from training sites, services and support activities, and prevocational services aimed at preparing an individual for paid or unpaid employment.

"Developmental disability" means a severe, chronic disability that (i) is attributable to a mental or physical

impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that individual attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and (v) results in the individual's need for special care, treatment or services that are individually planned and coordinated, and that are of lifelong or extended duration.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through diagnostic and evaluative criteria.

"Environmental modifications" means physical adaptations to a house, place of residence or work site, when the modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by the Department of Medical Assistance Services for children under the age of 21 according to federal guidelines which prescribe specific preventive and treatment services for Medicaid-eligible children.

"Habilitation" means prevocational and supported employment for mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded, aimed at preparing an individual for paid or unpaid employment.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means the service plan developed by the individual service provider related solely to the specific tasks required of that service provider. ISPs help to comprise the overall Consumer Service Plan of care for the individual. The ISP is defined in DMHMRSAS licensing regulations VR 470-02-09.

"Inventory for client and agency planning" or "ICAP" means the assessment instrument used by case managers and care coordinators to record the mentally retarded individual's needs and document that the individual meets the ICF/MR level of care.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Nursing services" means skilled nursing services listed in the plan of care which are ordered by a physician and required to prevent institutionalization, not available under the State Plan for Medical Assistance, are within the scope of the state's Nurse Practice Act and are provided by a registered professional nurse, or licensed practical nurse under the supervision of a registered nurse, licensed to practice in the state.

"Personal assistance" means assistance with activities of daily living, medication or other medical needs and monitoring health status and physical condition for individuals who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job or task oriented but focus on goals such as attention span and motor skills. Compensation, if provided, would be for persons whose productivity is less than 50% of the minimum wage.

"Related conditions" means those conditions defined in 42 CFR 435.1009 as severe, chronic disabilities attributable to cerebral palsy or epilepsy or other conditions found to be closely related to mental retardation due to the impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, which requires treatment or services similar to those required for these persons. A related condition must manifest itself before the person reaches age 22, be likely to continue indefinitely and result in substantial functional limitations in three or more areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction and capacity for independent living, as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Residential support services" means support provided in

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the mentally retarded individual's home or in a licensed residence which includes training, assistance, and supervision in enabling the individual to maintain or improve his health, assistance in performing individual care tasks, training in activities of daily living, training and use of community resources, and adapting behavior to community and home-like environments. Reimbursement for residential support shall not include the cost of room and board.

"Respite care" means services given to individuals unable to care for themselves provided on a short-term basis because of the absence or need for relief of those persons normally providing the care.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy or physical therapy disciplines to assist the individual, parents/family members, residential support and day support providers in implementing an individual service plan.

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

"Supported employment" means training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded.

"Therapeutic consultation" means consultation provided by members of psychology, social work, behavioral analysis, speech therapy, occupational therapy or physical therapy disciplines to assist the individual, parents/family members, residential support and day support providers in implementing an individual service plan.

§ 2. General coverage and requirements for home and community-based care services.

A. Waiver service populations.

Home and community-based services shall be available through two a § 1915(c) waiver services programs. The services, eligibility determination, authorization process and provider requirements set forth in these regulations apply equally to both waiver programs. DMAS shall assign individuals to a waiver program based on the individual's diagnosis or condition .

1. Coverage shall be provided under a the waiver program specifically for the following individuals currently residing in nursing facilities who have been determined to require the level of care provided in an intermediate care

facility for the mentally retarded:

- a. 1. Individuals with mental retardation.
- b. 2. Individuals with related conditions *currently residing in nursing facilities and determined to require specialized services* .

2. Coverage shall be provided under a separate waiver program for the following individuals who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded:

a. Individuals with mental retardation:

- b. 3. Individuals under the age of six at developmental risk who have been determined to require the level of care provided in an intermediate care facility for the mentally retarded. At age six, these individuals must be determined to be mentally retarded to continue to receive home and community-based care services.

B. Covered services.

1. Covered services shall include: residential support, ~~habilitation~~, day support , *supported employment, personal assistance, respite care, assistive technology, environmental modifications, nursing services and therapeutic consultation.*

2. These services shall be clinically appropriate and necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditure under the waiver must not exceed the average per capita expenditures for the level of care provided in an intermediate care facility for the mentally retarded under the State Plan that would have been made had the waiver not been granted.

C. Patient eligibility requirements.

1. Virginia shall apply the financial eligibility criteria contained in the State Plan for the categorically needy and the medically needy. Virginia has elected to cover the optional categorically needy group under 42 CFR 435.211, 435.231 and 435.217. The income level used for 435.211, 435.231 and 435.217 is 300% of the current Supplemental Security Income payment standard for one person.

2. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and be Medicaid eligible in an institution. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

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

a. For individuals to whom § 1924(d) applies, Virginia intends to waive the requirement for comparability pursuant to § 1902(a)(10)(B) to allow for the following:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training shall be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

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

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

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the Plan.

b. For all other individuals:

(1) An amount for the maintenance needs of the individual which is equal to the categorically needy income standard for a noninstitutionalized individual unless the individual is a working patient. Those

individuals involved in a planned habilitation program carried out as a supported employment or prevocational or vocational training will be allowed to retain an additional amount not to exceed the first \$75 of gross earnings each month and up to 50% of any additional gross earnings up to a maximum personal needs allowance of \$575 per month (149% of the SSI payment level for a family of one with no income).

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family which shall be equal to the medically needy income standard for a family of the same size.

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but covered under the state Medical Assistance Plan.

D. Assessment and authorization of home and community-based care services.

1. The individual's need for home and community-based care services shall be determined by the CSB case manager after completion of a comprehensive assessment of the individual's needs and available support. The case manager shall complete the ~~Inventory for Client and Agency Planning (ICAP)~~ *assessment*, determine whether the individual meets the intermediate care facility for the mentally retarded (ICF/MR) criteria and develop the Consumer Service Plan (CSP) with input from the recipient, family members, service providers and any other individuals involved in the individual's maintenance in the community.

2. An essential part of the case manager's assessment process shall be determining the level of care required by applying the existing DMAS ICF/MR criteria (VR 460-04-8.2).

3. The case manager shall gather relevant medical, social, and psychological data and identify all services received by the individual. Medical examinations shall be *current*, completed *prior to the individual's entry to the waiver*, no earlier than ~~60 days~~ *12 months* prior to beginning waiver services. Social assessments must have been completed within one year of beginning waiver services. Psychological evaluations or reviews must be completed within a year prior to the start of waiver services. In no case shall a psychological review be based on a full psychological evaluation that precedes admission to waiver services by more than three years.

4. The case manager shall explore alternative settings to provide the care needed by the individual. Based

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on the individual's preference, preference of parents or guardian for minors, or preference of guardian or authorized representative for adults, and the assessment of needs, a plan of care shall be developed for the individual. For the case manager to make a recommendation for waiver services, community-based care services must be determined to be an appropriate service alternative to delay, avoid, or exit from nursing facility placement.

5. Community-based care waiver services may be recommended by the case manager only if:

a. The individual is Medicaid eligible as determined by the local office of the Department of Social Services,

b. The individual is either mentally retarded as defined in § 37.1-1 of the Code of Virginia, has a related condition, *and is currently residing in a nursing facility and been determined to require specialized services*, or is a child under the age of six at developmental risk who would, in the absence of waiver services, require the level of care provided in an ICF/MR facility, the cost of which would be reimbursed under the Plan,

c. The individual requesting waiver services shall not receive such services while an inpatient of a nursing facility or hospital.

6. The case manager must submit the results of the comprehensive assessment and a recommendation to the care coordinator for final determination of ICF/MR level of care and authorization for community-based care services. DMHMRSAS authorization must be obtained prior to referral for service initiation and Medicaid reimbursement for waiver services. DMHMRSAS will communicate in writing to the case manager whether the recommended service plan has been approved or denied and, if approved, the amounts and type of services authorized.

7. All Consumer Service Plans are subject to approval by DMAS. DMAS is the single state authority responsible for the supervision of the administration of the community-based care waiver. DMAS has contracted with DMHMRSAS for recommendation of preauthorization of waiver services and utilization review of those services.

§ 3. General conditions and requirements for all home and community-based care participating providers.

A. General requirements.

Providers approved for participation shall, at a minimum, perform the following:

1. Immediately notify DMAS in writing of any change

in the information which the provider previously submitted to DMAS.

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

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

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

5. Provide services and supplies to recipients in full compliance with Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin and of Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of a handicap and both the Virginians with Disabilities Act and the Americans with Disabilities Act.

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

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

8. Accept Medicaid payment from the first day of the recipient's eligibility.

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

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

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

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

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

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

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

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

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

B. Requests for participation.

DMAS will screen requests to determine whether the provider applicant meets the following basic requirements for participation.

C. Provider participation standards.

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

1. The provider must have the ability to serve all individuals in need of waiver services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement.

2. The provider must have the administrative and financial management capacity to meet state and federal requirements.

3. The provider must have the ability to document and maintain individual case records in accordance with state and federal requirements.

4. The provider of residential and day support services must meet the licensing requirements of DMHMRSAS that address standards for personnel, residential and day program environments, and program and service content. Residential support services may also be provided in programs licensed by DSS (homes for adults) or in adult foster care homes approved by local DSS offices pursuant to state DSS regulations. In addition to licensing requirements, persons providing residential support services are required to pass an objective, standardized test of skills, knowledge and abilities developed by DMHMRSAS and administered [by employees of the CSB] according to DMHMRSAS policies.

5. ~~Habilitation~~ *Supported employment or prevocational*

training services shall be provided by agencies that are either licensed by DMHMRSAS or are vendors of prevocational, vocational or supported employment services for DRS.

6. Services provided by members of professional disciplines shall meet all applicable state licensure or certification requirements. Persons providing consultation in behavioral analysis shall be certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities. *Persons providing rehabilitation engineering shall be contracted with DRS.*

7. All facilities covered by § 1616(e) of the Social Security Act in which home and community-based care services will be provided shall be in compliance with applicable standards that meet the requirements of 45 CFR Part 1397 for board and care facilities. Health and safety standards shall be monitored through the DMHMRSAS's licensure standards, VR 470-02-08, VR 470-02-10 and VR 470-02-11 or through DSS licensure standards VR 615-22-05 and VR 615-50-1.

8. Personal assistance services shall be provided by a DMAS certified personal care provider, a DMHMRSAS residential support provider or, for individuals with related conditions who are capable of directing this service, the provider may be an individual registered with DRS.

9. Respite care services shall be provided by a DMAS certified personal care provider, a DMHMRSAS residential support provider, approved by DSS as a foster care home for children or adult foster home or be registered with the CSB as an individual provider of respite care.

10. Nursing services shall be provided by a DMAS certified private duty nursing or home health provider or by a licensed registered nurse or practical nurse contracted or employed by the CSB.

11. Environmental modifications shall be provided in accordance with all applicable state or local building codes by contractors of the CSB or DRS who shall be reimbursed for the amount charged by said contractors.

12. Assistive technology shall be provided by agencies under contract with DMAS as a durable medical equipment and supply provider.

D. Adherence to provider contract and DMAS provider service manual.

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

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E. Recipient choice of provider agencies.

If there is more than one approved provider agency in the community, The waiver recipient shall be informed of all available providers in the community and shall have the option of selecting the provider agency of his choice from among those agencies which can appropriately meet the individual's needs .

F. Termination of provider participation.

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

G. Reconsideration of adverse actions.

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

1. The reconsideration process shall consist of three phases:

- a. A written response and reconsideration of the preliminary findings.
- b. The informal conference.
- c. The formal evidentiary hearing.

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

3. An appeal of adverse actions shall be heard in accordance with the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia) and the State Plan for Medical Assistance provided for in § 32.1-325 of the Code of Virginia. Court review of the final agency determination shall be made in accordance with the Administrative Process Act.

H. Responsibility for sharing recipient information.

It shall be the responsibility of the case management provider to notify DMAS and DSS, in writing, when any of the following circumstances occur:

1. Home and community-based care services are

implemented.

2. A recipient dies.

3. A recipient is discharged or terminated from services.

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

I. Changes or termination of care.

It is the care coordinator's responsibility to authorize any changes to a recipient's CSP based on the recommendation of the case management provider.

1. Agencies providing direct service are responsible for modifying their individual service plan and submitting it to the case manager any time there is a change in the recipient's condition or circumstances which may warrant a change in the amount or type of service rendered.

2. The case manager will review the need for a change and may recommend a change to the plan of care to the care coordinator.

3. The care coordinator will approve or deny the requested change to the recipient's plan of care and communicate this authorization to the case manager within 72 hours of receipt of the request for change.

4. The case manager will communicate in writing the authorized change in the recipient's plan of care to the individual service provider and the recipient, in writing, providing the recipient with the right to appeal the decision pursuant to DMAS Client Appeals Regulations (VR 460-04-8.7).

5. Nonemergency termination of home and community-based care services by the individual service provider. The individual service provider shall give the recipient or family and case manager 10 days' written notification of the intent to terminate services. The letter shall provide the reasons for and effective date of the termination. The effective date of services termination shall be at least 10 days from the date of the termination notification letter.

6. Emergency termination of home and community-based care services by the individual services provider. In an emergency situation when the health and safety of the recipient or provider agency personnel is endangered, the case manager and care coordinator must be notified prior to termination. The 10-day written notification period shall not be required.

7. Termination of home and community-based care services for a recipient by the care coordinator. The

effective date of termination shall be at least 10 days from the date of the termination notification letter. The case manager has the responsibility to identify those recipients who no longer meet the criteria for care or for whom home and community-based services are no longer an appropriate alternative. The care coordinator has the authority to terminate home and community-based care services.

J. Suspected abuse or neglect.

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

K. DMAS monitoring.

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

§ 4. Covered services and limitations.

A. Residential support services shall be provided in the recipient's home or in a licensed residence in the amount and type dictated by the training, supervision, and personal care available from the recipient's place of residence. Service providers are reimbursed only for the amount and type of residential support services included in the individual's approved plan of care based on an hourly fee for service. Residential support services shall not be authorized in the plan of care unless the individual requires these services and they exceed the care included in the individual's room and board arrangement.

B. Day support services include a variety of training, support, and supervision offered in a setting which allows peer interactions and community integration. *If prevocational services are offered, the plan of care must contain documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Compensation for prevocational services can only be made when the individual's productivity is less than 50% of the minimum wage. Service providers are*

reimbursed only for the amount and type of day support services included in the individual's approved plan of care based on a daily fee for service established according to the setting, intensity and duration of the service to be delivered.

C. *Habilitation Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized supervision to enable a consumer to maintain paid employment provided to mentally retarded individuals who have been discharged from a Medicaid certified nursing facility or nursing facility for the mentally retarded prevocational and supported employment services for former institutional residents. Each plan of care must contain documentation regarding whether prevocational or supported employment services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or in special education services through § 602(16) and (17) of the Individuals with Disabilities Education Act. When services are provided through these sources, the plan of care shall not authorize them as a waiver funded expenditure. Service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on a daily fee for service established according to the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the individual is in the supported employment environment.*

D. Therapeutic consultation is available under the waiver for Virginia licensed or certified practitioners in psychology, social work, occupational therapy, physical therapy, therapeutic recreation, rehabilitation engineering and speech therapy. Behavioral analysis performed by persons certified by DMHMRSAS based on the individual's work experience, education and demonstrated knowledge, skills, and abilities may also be a covered waiver service. These services may be provided, based on the individual plan of care, for those individuals for whom specialized consultation is clinically necessary to enable their utilization of waiver services. Therapeutic consultation services, other than behavioral analysis, may be provided in residential or day support settings or in office settings in conjunction with another waiver service. Behavioral analysis may be offered in the absence of any other waiver service when the consultation provided to informal caregivers is determined to be necessary to prevent institutionalization. Service providers are reimbursed according to the amount and type of service authorized in the plan of care based on an hourly fee for service.

E. Environmental modifications shall be available to individuals who are receiving at least one other waiver service. It is provided primarily in the individual's home or other community residence in accordance with all applicable state or local building codes. A maximum limit of \$5,000 may be reimbursed in a year.

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F. Personal assistance is available only for individuals who do not receive residential support services and for whom training and skills development are not primary objectives or are provided through another program or service.

G. Respite care services are limited to a maximum of 30 days or 720 hours per year.

H. Nursing services are for individuals with serious medical conditions and complex health care needs which require specific skilled nursing services which cannot be provided by non-nursing personnel. Skilled nursing is provided in the individual's home or other community setting on a regularly scheduled or intermittent need basis. The plan of care must indicate that the service is necessary to prevent institutionalization and is not available under the State Plan for Medical Assistance.

1. Assistive technology is available to individuals who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. A maximum limit of \$5,000 may be reimbursed in a year.

§ 5. Reevaluation of service need and utilization review.

A. The Consumer Service Plan.

1. The Consumer Service Plan shall be developed by the case manager mutually with other service providers, the recipient, consultants, and other interested parties based on relevant, current assessment data. The plan of care process determines the services to be rendered to recipients, the frequency of services, the type of service provider, and a description of the services to be offered. Only services authorized on the CSP by DMHMRSAS according to DMAS policies will be reimbursed by DMAS.

The case manager is responsible for continuous monitoring of the appropriateness of the recipient's plan of care and revisions to the CSP as indicated by the changing needs of the recipient. At a minimum, the case manager shall review the plan of care every three months to determine whether service goals and objectives are being met and whether any modifications to the CSP are necessary.

3. The care coordinator shall review the plan of care every six months or more frequently as required to assure proper utilization of services. Any modification to the amount or type of services in the CSP must be authorized by the care coordinator, another employee of DMHMRSAS or DMAS.

B. Review of level of care.

1. The care coordinator shall review the recipient's level of care and continued need for waiver services every six months or more frequently as required to

assure proper utilization of services.

2. The case manager shall coordinate a comprehensive reassessment, including, *if indicated*, a medical examination and a psychological evaluation ~~or review~~, for every waiver recipient at least once a year. This reassessment shall include an update of the ICAP ~~assessment~~ instrument ; ~~or other appropriate instrument for children under six years of age~~, and any other appropriate assessment data based on the recipient's characteristics.

3. *A medical examination shall be completed for adults based on need identified by the provider, consumer, case manager, or care coordinator. Medical examinations for children shall be completed according to the recommended frequency and periodicity of the EPSDT program.*

4. *A new psychological evaluation is required every three years.*

C. Documentation required.

1. The case management agency must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ICAP ~~and other~~ assessment summaries and CSP's completed for the recipient maintained for a period not less than five years from the recipient's start of care.

b. All ISP's from any provider rendering waiver services to the recipient.

c. All supporting documentation related to any change in the plan of care.

d. All related communication with the providers, recipient, consultants, DMHMRSAS, DMAS, DSS, DRS or other related parties.

e. An ongoing log which documents all contacts made by the case manager related to the waiver recipient.

2. The individual service providers must maintain the following documentation for review by the DMHMRSAS care coordinator and DMAS utilization review staff for each waiver recipient:

a. All ISP's developed for that recipient maintained for a period not less than five years from the date of the recipient's entry to waiver services.

b. An attendance log which documents the date services were rendered and the amount and type of service rendered.

c. Appropriate progress notes reflecting recipient

status and, as appropriate, progress toward the goals on the ISP.

VR 460-04-8.1500. Community Mental Health and Mental Retardation Services: Amount, Duration and Scope of Services.

§ 1. Definitions. 12/1/92 30-130-540

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the client of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the client's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"Developmental disability" means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means that which is defined in DMHMRSAS licensing regulations VR 470-02-09.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

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

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§ 2. Mental health services.

The following services shall be covered: intensive in-home services, therapeutic day treatment for children and adolescents, day treatment/partial hospitalization, psychosocial rehabilitation, and crisis intervention. These covered services are further defined below:

A. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service shall be recommended on an Individual Service Plan (ISP).
3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.
4. Intensive in-home services shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.
5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.
6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

B. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to ~~260 days~~ ^{12 VAC 20-120-710} 780 units, provide evaluation, medication

education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills, and individual, group and family counseling. General program requirements shall be as follows:

1. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.
3. The program 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.
4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

C. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to ~~260 days~~ ^{780 units}, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

1. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.
2. The program 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 reimburseable unit. However, transportation time exceeding 25% of the

total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

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 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~~ *936 units*, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, or education within a supportive and normalizing program structure and environment.

1. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

2. The program shall operate a minimum of two continuous hours in a 24-hour period. A unit of service is defined as a minimum of two but less than four hours on a given day. Two units of service are defined as at least four but less than seven hours in a given day. Three units are defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3. Time allocated for field trips may be used to calculate time and units of service if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to

stabilize the individual or the family unit, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization. General program requirements are as follows:

1. The provider of crisis intervention services shall be licensed by DMHMRSAS.

2. Client-related activities provided in association with a face-to-face contact shall be reimbursable.

3. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP shall 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.

§ 3. Mental retardation */related conditions* services.

Day health and rehabilitation services shall be covered *for persons with mental retardation or related conditions* and the following definitions shall apply:

A. Day health and rehabilitation services (limited to ~~500~~ *780* 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

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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: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;
2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;
3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;
4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;
5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;
6. Environmental skills: training in punctuality, self-discipline, care of personal belongings, respect for property, remaining on task and adequate attendance; training at actual sites where the skills will be performed;
7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills, developing/enhancing social skills in relating to the general population, peer groups;
8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;
9. Travel and related training to and from the training sites and service and support activities;
10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.
11. Transportation time to and from the program site may be included as part of the reimburseable unit. However, transportation time exceeding 25% of the

total daily time spent in the service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

B. There shall be two levels of Day Health and Rehabilitation services: Level I and Level II.

1. Level I services shall be provided to individuals who meet the basic program eligibility requirements.

2. Level II services may be provided to individuals who meet the basic program eligibility requirements and for whom one or more of the following indicators are present:

a. The individual requires physical assistance to meet basic personal care needs (toilet training, feeding, medical conditions that require special attention);

b. The individual has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish individual service goals;

c. The individual requires extensive personal care and/or constant supervision to reduce or eliminate behaviors which preclude full participation in programming. A formal, written behavioral program is required to address behaviors such as, but not limited to, severe depression, self injury, aggression, or self-stimulation.

12/10/00 R.O. 5/70
§ 4. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or mental retardation services, the provider of the services must meet certain criteria. These criteria shall be:

1. The provider shall guarantee that clients have access to emergency services on a 24-hour basis;
2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health

Mental Retardation and Substance Abuse Services; and

6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:

a. Mental health.

(1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.

(2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.

(3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.

(4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.

(5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program

(6) Case Management: certified by DMHMRSAS

b. Mental retardation.

(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program

(2) Case Management: Certified by DMHMRSAS

c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.

§ 5. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

§ 6. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

V.A.R. Doc. No. R94-668, Filed March 2, 1994, 11:33 a.m.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance

with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: VR 615-01-52 Food Stamp Program - Resource Exclusion.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Effective Date: April 20, 1994.

Summary:

One factor of eligibility for the Food Stamp Program is determined by the calculation of a household's resources. Regulations at 7 CFR 273.8 contain the policy requirements which establish the resource eligibility standards, countable resources, and resources which are exempted from consideration. A waiver of the regulations was granted to Virginia to allow modifications of the resource exemptions for a period to expire December 31, 1997. This regulation expands the listing of exempt resources to include allowance of an interest-bearing savings account with a balance of up to \$5,000 which has been established to pay for educational expenses or to be used as a down payment on a residence.

VR 615-01-52. Food Stamp Program - Resource Exclusion.

§ 1. Resource exemptions; interest-bearing savings accounts.

In addition to those exemptions from resources which are used to determine eligibility for the Food Stamp Program and which are mandated by federal law and regulation, an interest-bearing savings account established to pay for expenses of education at any level or to make a down payment on a primary residence will not be considered a resource as required under state law and allowed by waiver to federal regulations. The account balance may not exceed \$5,000. Only one account in this category is exempted for the food stamp household. Funds on deposit in the account and interest earned on the money shall be disregarded in determining eligibility as long as the money and interest remain in the account. Money withdrawn from the account for the purposes stated in this section shall also be disregarded in determining eligibility but withdrawn for any other reason shall be treated as a countable resource in the month withdrawn. Amounts in excess of \$5,000 maximum shall be treated as a countable resource.

V.A.R. Doc. No. R94-650; Filed March 1, 1994, 5:35 p.m.

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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.

Effective Date: April 20, 1994.

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 has been repealed because the commission has determined that this section is no longer necessary.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from William H. Anderson, Virginia Racing Commission, 1500 East Main Street, Suite 301, Richmond, VA 23219, telephone (804) 371-7363. There may be a charge for copies.

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;

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- 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

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- 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 commissio

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

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(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;

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(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

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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

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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.

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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:

a. The totalizator shall maintain at least two independent 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

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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

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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 the 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~~

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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

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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.

2. 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 (VAPA). 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 §§ 9-6-1412 through 9-6-1414 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

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~~"conclusions" and to include as much detail as the commission feels is necessary to set out the reasons and basis for its decisions; and~~

~~e. 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

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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 pari-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 unutilized 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.

D. 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.

E. Identification of tickets.

The responsibility for identifying valid pari-mutuel tickets rests with the licensee.

F. 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 same 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.

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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, then 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

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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, then 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

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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

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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 from 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

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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. R94-648; Filed March 1, 1994, 3:34 p.m.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

AT RICHMOND, FEBRUARY 9, 1994

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS940014

Ex Parte in re: Adoption of supplemental report form pursuant to Virginia Code § 38.2-1905.2.

ORDER ADOPTING SUPPLEMENTAL REPORT FORM

PURSUANT to Virginia Code § 38.2-1905.2.A and B.,

IT IS ORDERED that the supplemental report form, which is attached hereto and made a part hereof, be, and it is hereby, ADOPTED; and

IT IS FURTHER ORDERED that licensed insurers file with the Commission their supplemental reports in the form adopted herein on or before May 1, 1994 as established in the Commission's December, 1993 Report to the Legislature pursuant to Virginia Code § 38.2-1905.1.A.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to Mary M. Bannister, Deputy Commissioner, Bureau of Insurance, who shall cause a copy of this order to be sent to every insurer licensed to transact the business of property and casualty insurance in the Commonwealth of Virginia.

February 17, 1994

Administrative Letter 1994 - 1

TO: All Insurers Licensed to Write Commercial Liability Insurance

RE: Supplemental Reports for Potentially Noncompetitive Lines and Subclassifications of Commercial Liability Insurance as Required by Virginia Code Section 38.2-1905.2 Due May 1, 1994

Virginia Code Section 38.2-1905.1 requires the State Corporation Commission (SCC) to designate lines and subclassifications of insurance where it believes competition may not be an effective regulator of rates. Virginia Code Section 38.2-1905.2 provides that all insurers licensed to write the classes of insurance defined in Sections 38.2-117 (personal injury liability), 38.2-118 (property damage liability), and 38.2-119 (workers' compensation and employers' liability) shall file a report showing their direct experience in the Commonwealth attributable to all lines and subclassifications of liability

insurance designated by the SCC in accordance with subsection B of Section 38.2-1905.1.

The lines and subclassifications where the SCC has cause to believe that competition may not be an effective regulator of rates have been designated in the SCC's report, "The Level of Competition, Availability, and Affordability in the Commercial Liability Insurance Industry", submitted to the General Assembly in December of 1993. Copies of this report may be obtained by phoning the Property and Casualty Division of the Bureau of Insurance at (804) 371-9628. A listing of the designated lines and subclassifications is attached (See Exhibit 2). It should be noted that no subclassifications of workers' compensation and employer's liability insurance were designated as potentially noncompetitive in this report, thus insurers should not include any workers' compensation and employer's liability experience in this data call.

To collect the data required by Virginia Code Section 38.2-1905.2, the SCC has adopted the attached supplemental report form that each insurer is required to complete for the designated lines and subclassifications. The attached supplemental report form has not been changed substantially from the supplemental report forms adopted by the SCC in 1989, 1990 and 1992.

Pursuant to Virginia Code Section 38.2-1905.2.B, all supplemental reports should be submitted in machine readable format. A diskette reporting system has been developed to enable insurers to comply with this requirement. A diskette containing this system will be forwarded to you upon receipt of the Diskette Request Form contained in the attached instructions. Experience for 1992 and 1993 should be reported on one form for each market definition specified in Exhibit 2. The market definitions provided are to be used as a guide in defining specific lines and subclassifications which are required to be reported. Insurers should also report the required information for policies written under any comparable classification in use by the individual insurer. The information reported should include data for monoline policies, as well as package policies.

Pursuant to the Commission's Order of February 9, 1994, a copy of which is attached, the reports are due, and must be received by, May 1, 1994. If some information is not available, insurers should estimate appropriate figures to complete the report. Items allocated from countrywide data must be allocated in the same manner as for the NAIC Annual Statement, pursuant to Section 38.2-1905.2.B of the Code of Virginia. Insurers with no written premiums in one or more of the lines or subclassifications for 1992 and/or 1993 must complete and return Exhibit 10A and Exhibit 10B. No insurer licensed to write the classes of insurance as defined in Virginia Code Sections 38.2-117, 38.2-118, and 38.2-119 is exempted from this data call, regardless of whether or not said insurer wrote business in Virginia during the experience period.

State Corporation Commission

If you have any questions regarding this data call, please contact:

Eric Lowe
 Insurance Market Examiner
 Bureau of Insurance
 P. O. Box 1157
 Richmond, VA 23209
 Telephone: (804) 371-9628

Virginia Code Section 38.2-218 provides that any person who knowingly or willfully violates any provision of the insurance laws shall be punished for each violation by a penalty of not more than \$5,000. Failure to file this report in a substantially complete and accurate manner by the due date may be considered a willful violation and may subject the insurer to an appropriate penalty.

Attached is a sheet of additional instructions (See Exhibit 1) to facilitate accurate completion of the supplemental reports.

/s/ Steven T. Foster
 Commissioner of Insurance

VA.R. Doc. No. R94-631; Filed March 1, 1994, 12:03 p.m.

SUPPLEMENTAL REPORT REQUIRED BY VIRGINIA CODE SECTION 38.2-1905.2 FOR CERTAIN LINES OR SUBCLASSIFICATIONS OF COMMERCIAL LIABILITY INSURANCE

BY ORDER OF THE STATE CORPORATION COMMISSION THIS REPORT IS DUE ON WEDNESDAY MAY 1, 1994, AT THE STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, MAILING ADDRESS: P. O. BOX 1157, RICHMOND, VIRGINIA 23209, OR STREET ADDRESS: 1300 E. MAIN STREET, RICHMOND, VIRGINIA 23219.

All insurers licensed to write the forms of insurance defined in Section 38.2-117 (Personal Injury Liability), 38.2-118 (Property Damage Liability), and 38.2-119 (Workers' Compensation and Employers' Liability) shall file this report on their direct experience in the Commonwealth attributable to the line or subclassification of liability insurance defined.

For the market designated, provide the information requested:

A. Market number and name: _____

B. Insurer: _____

C. NAIC #: _____

D. Group Name: _____

E. Group NAIC #: _____

(Each insurer must report separately; group reports are not permitted.)

NOTE:

- All figures are to be reported in whole numbers or dollars. Do not include dollar signs, decimal points, or commas.
- For item 1, policies written for other than a 12 month term should be adjusted to an annual basis.
- Losses exclude all loss adjustment expenses which are reported in item 4.
- Loss adjustment expenses reported in item 4 should include incurred but not reported loss adjustment expenses.

	Calendar Year (Except As Otherwise Specified)		
	1989	1990	1991
1. Number of policies written	_____	_____	_____
2. Direct premiums written	_____	_____	_____
3. A. Direct premiums earned	_____	_____	_____
B. Net premiums earned	_____	_____	_____
4. Direct losses incurred	_____	_____	_____
A. Direct losses paid during the calendar year:	_____	_____	_____
(1) for the current accident year	_____	_____	_____
(2) for prior accident years	_____	_____	_____
B. Reserves for reported losses at the end of the calendar year:	_____	_____	_____
(1) for the current accident year	_____	_____	_____
(2) for prior accident years	_____	_____	_____
C. Reserves for reported losses at the end of the previous calendar year	_____	_____	_____
D. Reserves for incurred but not reported losses at the end of the calendar year:	_____	_____	_____
(1) for the current accident year	_____	_____	_____
(2) for prior accident years	_____	_____	_____

- C. If any part of question 10.B was answered yes, indicate:
1. The maximum schedule credits and/or debits allowed
(+) X to (+) X
 2. The median expense credits allowed
(-) X
 3. The package modification factor X
- This factor should be expressed as a final rating factor, i.e. .15 or .85. Enter only one factor. If you have different factors for different categories, please give a weighted average for all subcategories within this line.

I hereby certify that the information contained in this report contains all applicable Virginia data as reported to the MAC on page 14 of the Annual Statement; line 5.2 (medical liability), line 11 (medical malpractice), line 17 (Other Liability), and line 18 (Products Liability).

Signed: _____ Title: _____
 Telephone: _____ Print Name: _____
 Date: _____

- E. Reserves for incurred but not reported losses at the end of the previous calendar year _____
- F. Accidents year incurred losses
 [A(1) + B(1) + B(1)] _____
- G. Calendar year incurred losses
 [A(1) + A(2) + B(1) + B(2) + C + B(1) + B(2) + E] _____
5. Number of claim closed with payment during the calendar year _____
6. Number of open claims at the end of the calendar year _____
7. Net investment gain (loss) including realized capital gains generated by the line or sublines of business attributable to net premium, loss and loss expense reserves. _____
8. A. Direct underwriting expenses incurred in producing the written premium on line 2 (direct premium written):
 (1) commissions _____
 (2) General expenses _____
 (3) other acquisition expenses _____
 (4) premium taxes, licenses and fees _____
 (5) Total (sum of all parts in question 8 A) _____
- B. All direct loss adjustment expenses incurred on a calendar year basis: _____
9. Have you sought to write or obtain new business within this line or subclassification within the past year?
 Yes _____ No _____

10. A. What percentage of reported 1993 premium were written using:

An ISO Rate Filing? X
 An ISO Loss Cost Filing? X
 Independent Rate and Risk? X
 Total (must equal 100%) X

B. Do you apply schedule, expense, experience, and/or package modifications to eligible risks?

1. Schedule	Yes	No
2. Expense	Yes	No
3. Experience	Yes	No
4. Package modification	Yes	No

EXHIBIT 1

Page 1

SUPPLEMENTAL REPORTS DATA CALL INSTRUCTIONS

The following should be utilized to assure the proper completion and submission of the supplemental reports, which must be received by the Commission on or before May 1, 1994.

1. The report(s) must be submitted on diskette; however, insurers that cannot comply may submit the appropriate paper reports. A written request detailing why the reports cannot be submitted using the diskette reporting program must be submitted to Eric Lowe at the address on page 1 of this administrative letter. Once received, a written exemption will be issued to the requesting insurer if circumstances warrant the exception.
2. Please complete and return the diskette request form. The diskette will contain the supplemental report forms, previously reported data, the operating system, and detailed instructions. If you have any questions regarding the diskette filing procedure, please contact Eric Lowe at (804) 371-9628.
3. Insurers submitting data on the diskette will only be required to report 1992 and 1993 data, unless data from previous years is being amended. Insurers that submit paper reports must provide data for all five years (1989 through 1993) for all questions on the reporting form. Paper forms received without all five years of data will be considered substantially incomplete, invoking possible penalties as outlined on page 1 of this administrative letter. All paper reports must be typed. Handwritten reports will not be accepted.
4. Each supplemental report must contain the individual insurer name, NAIC number, group name and group NAIC number. **REPORTS ARE TO BE FILED FOR INDIVIDUAL INSURERS (DO NOT SUBMIT AGGREGATED GROUP REPORTS).**
5. Submit only one supplemental report per market definition. For example, all contractors' subclassifications are considered one market and separate reports should not be submitted for the various subclassifications. (Do not combine markets.)
6. Exhibits 10A and 10B must both be completed for all insurers that are licensed but that have no written premiums in any of the listed market definitions for 1992 or 1993.
7. Use whole dollars or numbers. Do not include dollar signs, decimal points, or commas in completing the supplemental report. **DO NOT OMIT 000'S.** Do not use dashes, "N/A", or leave blanks within the report.

EXHIBIT 1

PAGE 2

8. Items 1, 2, 3, 5, 6, 7, and 8 of the supplemental reports shall be reported on a calendar year basis. The subparts of item 4 shall be reported on a calendar or accident year basis as required.
9. Items 4 B, and C do not include incurred but not reported losses (IBNR).
10. Losses exclude all loss adjustment expenses which are reported in item 8 B.
11. Loss adjustment expenses reported in item 8 B should include any incurred but not reported loss adjustment expenses.
12. For item 1, policies written for other than a 12 month term should be adjusted to an annual basis.
13. **Additional instructions to assist in the completion of the supplemental reports are attached (exhibits 2-9).**

EXHIBIT 1
PAGE 4

**Additional Instructions for Completion of
the Supplemental Reports**

Summary Description

- A. Market Number and Name.
- B. Insurer.
- C. NAIC Number.
- D. Group Name.
- E. Group NAIC Number.

Definition

Defined by Virginia Act 1994-1.
Exact verbal name of insurer.
NAIC Number for each insurer.
Exact verbal name of group.
Group NAIC Number.

Definition

Sum of reserves at the end of the calendar year being reported.
A count of policies written in a calendar year within a Market Definition. The count should be annualized. Policy counts should be annualized (e.g. 6 months policies should be counted once in a given year and 3 year policies should be counted in each year).

QUESTIONS

NOTE: All accident year data should be evaluated as of the end of each calendar year being reported.

1. Number of Policies Written.
2. Direct Premiums Written.
3. A. Direct Premiums Earned.
B. Net Premiums Earned.
4. A.(1) Direct Losses Paid During the Calendar Year for the Current Accident Year.

A.(2) Direct Losses Paid During the Calendar Year for Prior Accident Years.

B.(1) Reserves for Reported Losses at the End of the Calendar Year for the Current Accident Year.

B.(2) Reserves for Reported Losses at the End of the Calendar Year for Prior Accident Years.

C. Reserves for Reported Losses at the End of the Previous Calendar Year.

D.(1) Reserves for Incurred But Not Reported Losses at the End of the Calendar Year for the Current Accident Year.

D.(2) Reserves for Incurred But Not Reported Losses at the End of the Calendar Year for Prior Accident Years.

E. Reserves for Incurred But Not Reported Losses at the End of the Previous Calendar Year.

F. Accident Year Incurred Losses.

G. Calendar Year Incurred Losses.

5. Number of Claims Closed With Payment During the Calendar Year.

6. Number of Open Claims at the End of the Calendar Year.

7. Net Investment Gain (Loss).

8. A. Direct Underwriting Expense Incurred.

B. All Direct Loss Adjustment Expense Incurred During Each Calendar Year.

9. Seeking to write new business?

10. Rating Information Questions

IBNR reserves at the end of the calendar year are divided between (1) those in which the accident year is the same as the calendar year and (2) other accident years. Where the calendar year and accident year are NOT the same, this IBNR amount should be reported under Question 4 B.(1). (This figure should exclude Loss Adjustment Expense.)

IBNR reserves at the end of the calendar year are divided between (1) those in which the accident year is the same as the calendar year and (2) other accident years. Where the calendar year and accident year are NOT the same, this reserve amount should be reported under Question 4 B.(2). (This figure should exclude Loss Adjustment Expense.)

The sum of Questions 4 B.(1) and 4 B.(2) equals the total IBNR reserves at the end of the calendar year.

Sum of Questions 4 B.(1) and 4 B.(2) for the prior year end.

Sum of Questions 4 A.(1), 4 B.(1) and 4 B.(2).

Sum of Questions 4 A.(1), 4 A.(2), 4 B.(1), 4 B.(2), 4 B.(3), and 4 B.(4), minus 4 C. and 4 E.

A count of claims with indemnity and/or medical payments only.

Self defining.

Self defining.

Self defining.

Self defining.

This question applies to experience year 1993 only.

These questions apply to experience year 1993 only.

EXHIBIT 2

PAGE 1

SUPPLEMENTAL REPORT FOR CERTAIN LINES OR SUBCLASSIFICATIONS OF LIABILITY INSURANCE AS REQUIRED BY VIRGINIA CODE §38.2-1905.2

Market Number and Name	Market Definitions Commercial Statistical Plan (CSP) Classes
87001 Architects and Engineers Professional Liability	73908, 73909, 73910 (Subline 317)
87006 Insurance Agents Professional Liability	73123 (Subline 317)
87008 Lawyers Professional Liability	See Exhibit 5
87010 Medical Professional Liability 230 and 240 classes	All subline 210, 220, 230 and 240 classes
87013 Products and Completed Operations Liability	All subline 316 and 336 classes
87015 Real Estate Agents Professional Liability	73127 (Subline 317)
88022 Landfill Liability	All Classes*
88030 Volunteer Fire Departments and Rescue Squads Liability	See Exhibit 8
88031 Water Treatment Plants Liability	See Exhibit 9
91001 Commercial Contractors Liability including Asbestos Abatement Contractors Liability	See Exhibit 3
91002 Environmental Impairment Liability including Underground Storage Tank Liability	See Exhibit 4
91003 Municipal Liability including: Law Enforcement Agencies Liability-- Public Housing Liability Public Officials Errors and Omissions Liability-- School Board Errors and Omissions Liability-- Sewage Treatment Plant Liability	See Exhibit 6 CSP Code 73132 CSP Code 73131 All Classes* See Exhibit 6

EXHIBIT 2

Page 2

SUPPLEMENTAL REPORT FOR CERTAIN LINES OR SUBCLASSIFICATIONS OF LIABILITY INSURANCE AS REQUIRED BY VIRGINIA CODE §38.2-1905.2

93001 Day Care Liability See Exhibit 7

The above market definitions are to be used as a guide in defining specific markets which are required to be reported. Companies should also report the required information for policies written under any comparable classification in use by the individual company.

* NOTE: The ISO CSP does not have specific classes for this market.

EXHIBIT 3

Page 1

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
313	17140*		Air Conditioning, Heating, or Refrigeration Systems or Combined Heating and Air Conditioning Systems - installation, servicing and repair - including shop and retail stores or display rooms * Code 17140 includes "Gas Appliances or Equipment - household type - installation, servicing or repair"
334		91111	Air Conditioning Systems or Equipment - Dealers or distributors and installation, servicing or repair
334		95647	Heating or Combined Heating and Air Conditioning System or Equipment - dealers or distributors and installation, servicing or repair - no liquefied petroleum gas (LPG) equipment sales or work
334		95648	Heating or Combined Heating and Air Conditioning Systems or Equipment - dealers or distributors and installation, servicing or repair - Not Otherwise Classified
313	16135		Airport Runway or Warming Apron Construction, Paving or Repaving
334		91125	Airport Runway or Warming Apron - paving or repaving, surfacing, resurfacing or scraping
334		95630	Asbestos Abatement Contractors
313	76992		Boiler Inspecting or Scaling

EXHIBIT 3

Page 2

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
313	17145*		Boiler Installation or repair - steam * Code 17145 also includes "Tank Erection or Repair - metal - within buildings exclusively"
334		91250	Boiler Inspection, Installation, Cleaning or Repair
334		99572	Tank Construction, Installation, Erection or Repair - metal - not pressurized - within buildings exclusively
334		99573	Tank Construction, Installation, Erection or Repair - metal - pressurized - within buildings exclusively
313	16275*		Bridge or Elevated Highway Construction * Code 16275 also includes "Iron or Steel Erection - bridges"
334		91265	Bridge or Elevated Highway Construction - iron or steel
334		91266	Bridge or Elevated Highway Construction - concrete
313	17835		Building Equipment Installation, Erection, Servicing or Repair - Not Otherwise Classified
313	17885*		Building or Structure Raising, Moving or Underpinning - including incidental snoring * Code 17885 includes "Salvage Operations" and "Underpinning Buildings or Structures"

EXHIBIT 3

Page 3

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
334		91280	Building Structure - raising or moving
334		98698	Salvage Operations - Not Otherwise Classified
334		99803	Underpinning Buildings or Structures
313	17314		Cable Installation in Conduits or Subways
334		91302	Cable Installation in Conduits or Subways
334		91324	Caisson or Cofferdam Work - Foundations for buildings
334	16235*		Caisson Work - not foundations for buildings * Code 16235 also includes "Cofferdam Work," "Shaft Sinking" and "Tunneling"
334		91325	Caisson or Cofferdam work - not foundations for buildings
334		98871	Shaft Sinking
334		99798	Tunneling
313	17535*		Carpentry - Not Otherwise Classified * Code 17535 also includes "Ceiling or Wall Installation - not plastering", "Modular Units - building erection", "Prefabricated Building Erection"

EXHIBIT 3

Page 4

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
334		91342	Carpentry - Not Otherwise Classified
334		98502	Prefabricated Building Erection
313	17621		Ceiling or Wall Installation - metal
334		91436	Ceiling or Wall Installation - metal
313	17745*		Cement, Concrete or Granolithic Floor Construction, Finishing or Surfacing * Code 17745 also includes Construction - Not Otherwise Classified"
334		91560	Concrete Construction
313	17425*		Chimney Construction * Code 17425 also includes "Masonry - Not Otherwise Classified"
334		91481	Chimney Cleaning
334		97447	Masonry
313	17965		Cleaning or Renovating - outside Surfaces of Buildings
334		91522	Cleaning or Renovating - outside Surfaces of Buildings
313	17741		Concrete Block Construction - buildings

EXHIBIT 3

Page 5

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
313	16285		Conduit Construction
334		91577	Conduit Construction for Cables or Wires
313	42264		Contractors Permanent yards - maintenance or storage of equipment or material
334		91590	Contractors Permanent Yards - maintenance or storage of equipment or material
313	17755*		Core Drilling - Not Otherwise classified
			* Code 17755 also includes: "Drilling - Not Otherwise classified"
334		92101	Drilling - Not Otherwise classified
334		92102	Drilling - Water
313	16232		Dam or Reservoir Construction
334		91618	Dam or Reservoir Construction
313	16295*		Dike or Revetment Construction - river work only
			* Code 16295 also includes: "Jetty or Breakwater and "Levee Construction"
334		91641	Dike, Levee or Revetment Construction
334		96872	Jetty or Breakwater Construction
313	17511		Door, Window or Assembled Millwork Erection - metal or metal covered

EXHIBIT 3

Page 6

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
334		91746	Door, Window or Assembled Millwork - installation - metal
313	16293		Dredging - except gold dredging
334		92055	Dredging - Not Otherwise Classified
313	16144		Driveway, Parking Area or Sidewalk Construction, Paving or Repaving
334		92215	Driveway, Parking Area or Sidewalk - paving or repaving
313	17946		Dry Wall or Wallboard Installation
334		92338	Dry Wall or Wallboard Installation
313	16242		Electric Light or Power Line Construction - Rural Electrification Administration Projects only
334		92447	Electric Light or Power Line Construction - Rural Electrification Administration Projects only
313	16245*		Electric Light or Power Line Construction - Not Otherwise Classified
			* Code 16245 also includes: "Telephone, Telegraph or Fire Alarm Line Construction"
334		92446	Electric Light or Power Line Construction - Not Otherwise Classified
334		99613	Telephone, Telegraph or Cable Television Line Construction

EXHIBIT 3

Page 7

COMMERCIAL CONTRACTORS LIABILITY

<u>Class Code</u>			
<u>Subline</u>	<u>Old</u>	<u>New</u>	<u>Description</u>
313	17315		Electrical Wiring - within buildings - including installation or repair of fixtures or appliances
334		91127	Alarm and Alarm Systems - installation, servicing or repair
334		92451	Electrical Apparatus - installation, servicing or repair - Not Otherwise Classified
334		92478	Electrical Work - within building
313	17845		Elevator, Escalator or moving Sidewalk Installation, Service or Repair
334		92593	Elevator or Escalator Inspecting, Installation, Servicing or Repair
313	15111		Excavation - Not Otherwise Classified
334		94007	Excavation
313	17985		Fence Erection - metal
334		94276	Fence Erection Contractors
313	15161*		Fireproofing - structures * Code 15161 also includes "Insulation Work - installation or application of acoustical or thermal insulating materials in buildings or within building walls - Not Otherwise Classified"
334		94404	Fireproofing - structures

EXHIBIT 3

Page 8

COMMERCIAL CONTRACTORS LIABILITY

<u>Class Code</u>			
<u>Subline</u>	<u>Old</u>	<u>New</u>	<u>Description</u>
334		96408	Insulation Work - plastic - Not Otherwise Classified
334		96409	Insulation Work - organic or plastic in solid state
334		96410	Insulation Work - mineral
313	49531*		Garbage, Ashes or Refuse Collecting * Code 49531 also includes: "Street Cleaning - including snow removal from street and highways"
334		95233	Garbage, Ash or Refuse Collecting
334		99303	Street Cleaning
313	16225		Gas, Sewer, Steam or Water Mains or Connections Construction - including tunneling at street crossings
334		95310	Gas Mains or Connections Construction
334		98820	Sewer Mains or Connections Construction
334		99163	Steam Mains or Connections Construction
334		99946	Water Main or Connections Construction
313	07313		Grading of Land - Not Otherwise Classified
334		95410	Grading of Land

EXHIBIT 3

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
313	17765		Iron or Steel Erection - frame structures, iron work on outside of buildings including erecting or repairing balconies, fire escapes, railings, staircases, coal chutes or fireproof shutters
334		97651	Metal erection - frame structures - iron work on outside of buildings
313	15121		Iron or Steel Erection in the construction of dwellings not exceeding two stories in height
334		97652	Metal Erection - in the construction of dwellings not exceeding two stories in height
313	15122		Iron or Steel Erection - steel lock gates, gas holders, standpipes, water towers, smoke stacks, tanks, silos, prison cells or fire or burglar proof vaults
334		97654	Metal Erection - steel lock gates gas holders, standpipes, water tower, smokestacks, tanks, silos, prison cells, fire or burglar proof vaults
313	15125		Iron or Steel Erection - Not Otherwise Classified
334		97655	Metal Erection - structural - Not Otherwise Classified
313	16255		Irrigation or Drainage System Construction - including pile driving or dredging
334		96702	Irrigation or Drainage System Construction

EXHIBIT 3

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
313	15142		Military Reservation Construction - Carpentry
313	17762		Military Reservation Construction - iron or steel erection - not over two stories in height
313	16365*		Oil or Gas Pipe Construction - including pile driving and dredging
			* Code 16365 also includes "Pipe Line Construction - including pile driving or dredging"
334		98423	Pipeline Construction - gas
334		98424	Pipeline Construction - Not Otherwise Classified
334		98425	Pipeline Construction - Oil
334		98426	Pipeline Construction - slurry - nonflammable mixtures
313	17235*		Painting - oil or gasoline tanks - including shop operations
			* Code 17235 also includes "Painting, Decorating or Paper Hanging - Not Otherwise Classified- including shop operations", "Paperhanging" and "Sign Painting or Lettering - on buildings or structures - including operations"
334		98304	Painting - exterior - buildings Classified or structures - three stories or less
334		98305	Painting - interior buildings or structures

EXHIBIT 3

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COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
334		98306	Painting - Oil or gasoline tanks
334		98344	Paperhanging
334		99004	Sign Painting or Lettering on Buildings or Structures
313	17215		Painting - ship hulls
334		98307	Painting - ship hulls
313	17225		Painting - steel structures or bridges
334		98303	Painting - exterior - buildings or structures - exceeding three stories in height - Not Otherwise Classified
313	17805		Pile Driving - building foundations only
334		98413	Pile Driving - building foundations only
313	16296		Pile Driving - sonic method
334		98415	Pile Driving - sonic method
313	16294		Pile Driving - including timber wharf building - Not Otherwise Classified
334		98414	Pile Driving - Not Otherwise Classified
313	17185		Plumbing - Not Otherwise Classified
334		98482	Plumbing commercial and industrial
334		98483	Plumbing - residential or domestic
334		99080	Solar Energy Contractors

EXHIBIT 3

Page 12

COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
334		99948	Water Softening Equipment - installation, servicing or repair
334		98636	Refrigeration Systems or Equipment - dealers and distributors and installation, servicing or repair - commercial
313	17625		Roofing - all kinds - including yard employees
334		98677	Roofing - commercial
334		98678	Roofing - residential
334		98705	Sandblasting
313	17615*		Sheet Metal Work Erection Installation or Repair - Not Otherwise Classified
			* Code 17615 also includes "Siding Installation - not wood"
313	73122		Sign Erection or Repair - not outdoor advertising companies - including shop operations
334		98884	Sheet Metal Work - shop and outside
334		98967	Siding Installation
334		98993	Sign Erection, Installation or Repair
313	17141		Steam Pipe or Boiler Insulation
334		99165	Steam Pipe or Boiler Insulation
313	16115		Street or Road Construction or Reconstruction
334		99315	Street or Road Construction or Reconstruction

EXHIBIT 3

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COMMERCIAL CONTRACTORS LIABILITY

Subline	Class Code		Description
	Old	New	
313	16125		Street or Road Paving or Repaving, Surfacing or Resurfacing or Scraping
334		99321	Street or Road Paving or Repaving, Surfacing or Resurfacing or Scraping
313	16205		Subway Construction
334		99445	Subway Construction
313	17802		Swimming Pools - below ground - installation, service or repair
334		99507	Swimming Pools - installation, servicing or repair - below ground
313	17906		Swimming Pools - above ground - installation, service or repair
334		99506	Swimming Pools - above ground - installation, service or repair
334		99570	Tank Construction, Installation, Erection or Repair - metal - not pressurized - Not Otherwise Classified
334		99571	Tank Construction, Installation, Erection or Repair - metal - pressurized - Not Otherwise Classified
313	17821		Wrecking - marine- including salvage operations
334		99988	Wrecking - marine
313	17822		Wrecking Buildings or Structures - not marine - Not Otherwise Classified
334		99986	Wrecking - buildings or structures - Not Otherwise Classified

EXHIBIT 4

Page 1

MUNICIPAL LIABILITY

GOVERNMENTAL SUBDIVISION - NOT STATE OR FEDERAL

Municipalities (including boroughs, cities, towns, townships, etc.)

Subline*	Class Code		Population
	Old	New	
	91250	44100	Under 2,500
	91251	44101	2,501 - 10,000
	91252	44102	10,001 - 25,000
	91253	44103	25,001 - 50,000
	91254	44104	50,001 - 100,000
	91255	44105	100,001 - 250,000
	91256	44106	Over 250,000
	91263	Included	Personal Injury Coverage

Counties or Parishes

Subline*	Class Code		Population
	Old	New	
	91257	44108	Under 10,000
	91258	44109	10,001 - 25,000
	91259	44110	25,001 - 50,000
	91260	44111	50,001 - 100,000
	91261	44112	100,001 - 250,000
	91262	44113	Over 250,000
	91263	Included	Personal Injury Coverage
	#93050	93050	Governmental Composite Rated Risks

Class Code

Old	New	Description
93111		Government Employees - municipal, township, county or state
		This classification includes employees engaged in laboratory work, inspectors of the Board of Health, electrical inspectors, building inspectors and similar occupations. Workmen, mechanics or others engaged in manual labor or supervisors of construction work to be separately rated.

EXHIBIT 4

ENVIRONMENTAL IMPAIRMENT LIABILITY

Subline	Class Code		Description
	Old	New	
325	90000		Pollution Liability
350		90100	Pollution Liability Form - Including Clean-up Costs Coverage
350		90105	Pollution Liability Form - Excluding Clean-up Costs Coverage
350		90110	CGI Coverage Form - Pollution Extension Endorsement (Excludes Clean-up Costs Coverage) Underground Storage Tanks (all classes and types)

EXHIBIT 5

LAWYERS PROFESSIONAL LIABILITY

Subline	Class Code		Description
	Old	New	
317	81220		Lawyers - not members or employees of a partnership
317	81113		Additional Charge: Employed Lawyers not named as insureds and employed law clerks, investigators and abstracters - not employees of a partnership.
317	81330		Lawyers - members or employees of a partnership
317	81114		Additional Charge: Employed Lawyers not named as insureds and employed law clerks, investigators and abstracters - employees of a partnership.
317	81400		Lawyers
317	81420		Employed law clerks, Investigators, Abstracters and Paralegals

EXHIBIT 6

Page 1

MUNICIPAL LIABILITY

GOVERNMENTAL SUBDIVISION - NOT STATE OR FEDERAL

Municipalities (including boroughs, cities, towns, townships, etc.)

Subline*	Class Code		Population
	Old	New	
	91250	44100	Under 2,500
	91251	44101	2,501 - 10,000
	91252	44102	10,001 - 25,000
	91253	44103	25,001 - 50,000
	91254	44104	50,001 - 100,000
	91255	44105	100,001 - 250,000
	91256	44106	Over 250,000
	91263	Included	Personal Injury Coverage
<u>Counties or Parishes</u>			
	91257	44108	Under 10,000
	91258	44109	10,001 - 25,000
	91259	44110	25,001 - 50,000
	91260	44111	50,001 - 100,000
	91261	44112	100,001 - 250,000
	91262	44113	Over 250,000
	91263	Included	Personal Injury Coverage
#93050	93050		Governmental Composite Rated Risks

Class Code

Old	New	Description
	93111	Government Employees - municipal, township, county or state
		This classification includes employees engaged in laboratory work, inspectors of the Board of Health, electrical inspectors, building inspectors and similar occupations. Workmen, mechanics or others engaged in manual labor or supervisors of construction work to be separately rated.

EXHIBIT 6

Page 2

MUNICIPAL LIABILITY

GOVERNMENTAL SUBDIVISION - NOT STATE OR FEDERAL

Municipalities (including boroughs, cities, towns, townships, etc.)
Streets, Roads, Highways or Bridges

Class Code

<u>Old</u>	<u>New</u>	<u>Description</u>
93151		Streets, Roads or Highways - with or without sidewalks - including bridges and culverts but excluding toll bridges and drawbridges - existence hazard only (excluding New York)
	48727	Streets, Roads, Highways or Bridges - existence and maintenance hazard only

* NOTE: Except for Governmental Composite Rated Risks (class 93050), all old classes are subline 314 - all new classes are subline 334

NOTE: Sublines 322, 323, 324, 342, 343, and 344

EXHIBIT 6

Page 3

MUNICIPAL LIABILITY

LAW ENFORCEMENT AGENCIES LIABILITY SUBCLASS

All classes, including, but not limited to the following:

Agencies whose employees deal directly with the public and exercise general powers of arrest such as:

- (a) County Sheriff/Police Chief
- (b) Peace Officers

Agencies whose employees do not deal directly with the public and exercise limited power of arrest such as:

- (a) Jailers
- (b) Matrons
- (c) County Security
- (d) Civil Process Officers

Agencies who do not exercise power of arrest and whose duties are administrative such as:

- (a) County Commissioners
- (b) City Council
- (c) Mayors or City Managers
- (d) Auxiliary or Reserve Police
- (e) Coroner
- (f) School Crossing Guards, Humane Officers, Crime Prevention Officers

Agencies whose employees whose ordinary duties are only indirectly related to enforcement of criminal laws such as:

- (a) Clerical Staff/Fingerprinting/License Examination
- (b) Stenographic Personnel/Food Service/Photographic
- (c) Dispatcher/Record Keeping

EXHIBIT 6

Page 4

MUNICIPAL LIABILITY

PUBLIC HOUSING LIABILITY SUBCLASS

<u>Class Code</u>			
<u>Subline</u>	<u>Old</u>	<u>New</u>	<u>Description</u>
314	93181		Housing Projects - Federal, State, Local - Apartment Houses - not three or four family dwellings
314	93182		Housing Projects - Federal, State, Local - Dwellings - four family
314	93183		Housing Projects - Federal, State, Local - Dwellings - three family
314	93184		Housing Project - Federal, State, Local - Dwellings - two family
314	93185		Housing Projects - Federal, State, Local - Private Residences
334		64500	Housing Projects - Federal, State, Local

EXHIBIT 6

Page 5

MUNICIPAL LIABILITY

SEWAGE TREATMENT PLANTS LIABILITY SUBCLASS

<u>Class Code</u>			
<u>Subline</u>	<u>Old</u>	<u>New</u>	<u>Description</u>
313	49521		Sewage Disposal - plant operation
334		98810	Sewage Treatment Plants

EXHIBIT 7

DAY CARE LIABILITY

<u>Class Code</u>			
<u>Subline</u>	<u>Old</u>	<u>New</u>	<u>Description</u>
313	82115		Day Nurseries
334		41716	Day Care Centers Not-for-profit
334		41715	Day Care Centers Other Than Not-for-profit

EXHIBIT 8

VOLUNTEER FIRE DEPARTMENTS AND RESCUE SQUADS LIABILITY

Subline	Class Code		Description
	Old	New	
314	93131		Firehouses
314	69970		Volunteer First Aid and Rescue Squads
334		43551*	Fire Departments - volunteer
334		40030	Ambulance Service, First Aid or Rescue Squads

* Including Volunteer Rescue Squads operated in connection with Fire Departments.

EXHIBIT 9

WATER TREATMENT PLANTS LIABILITY

Subline	Class Code		Description
	Old	New	
334		99943	Water Companies
313		49411	Water Works - including outside salesmen, collectors and meter readers

EXHIBIT 10A
1992 Zero Report

INSURER	NAIC #
Enter a zero beside the lines and/or subclassifications of liability insurance where you have no written premium in 1992.	
87001 Architects and Engineers Professional Liability	_____
87006 Insurance Agents Professional Liability	_____
87008 Lawyers Professional Liability	_____
87010 Medical Professional Liability	_____
87013 Products and Completed Operations Liability	_____
87015 Real Estate Agents Professional Liability	_____
88022 Landfill Liability	_____
88030 Volunteer Fire Departments and Rescue Squads Liability	_____
88031 Water Treatment Plants Liability	_____
91001 Commercial Contractors Liability including Asbestos Abatement Contractors	_____
91002 Environmental Impairment Liability including Underground Storage Tank Liability	_____
91003 Municipal Liability including: Law Enforcement Agencies Liability Public Housing Liability Public Officials Errors and Omissions Liability School Board Errors and Omissions Liability Sewage Treatment Plants Liability	_____
93001 Day Care Center Liability	_____

I hereby certify that the information contained in this report contains all applicable Virginia data as reported to the NAIC on page 14 of the Annual Statement, line 5.2 (Multiperil Liability), line 11 (Medical Malpractice), line 17 (Other Liability), and line 18 (Products Liability).

Signed: _____
 Print Name: _____
 Title: _____
 Telephone: _____
 Date: _____

EXHIBIT 10B
1993 Zero Report

<u>INSURER</u>	<u>NAIC #</u>
Enter a zero beside the lines and/or subclassifications of liability insurance where you have no written premium in 1993.	
87001 Architects and Engineers Professional Liability	_____
87006 Insurance Agents Professional Liability	_____
87008 Lawyers Professional Liability	_____
87010 Medical Professional Liability	_____
87013 Products and Completed Operations Liability	_____
87015 Real Estate Agents Professional Liability	_____
88022 Landfill Liability	_____
88030 Volunteer Fire Departments and Rescue Squads Liability	_____
88031 Water Treatment Plants Liability	_____
91001 Commercial Contractors Liability including Asbestos Abatement Contractors	_____
91002 Environmental Impairment Liability including Underground Storage Tank Liability	_____
91003 Municipal Liability including: Law Enforcement Agencies Liability Public Housing Liability Public Officials Errors and Omissions Liability School Board Errors and Omissions Liability Sewage Treatment Plants Liability	_____
93001 Day Care Centers Liability	_____

I hereby certify that the information contained in this report contains all applicable Virginia data as reported to the NAIC on page 14 of the Annual Statement, line 5.2 (Multiperil Liability), line 11 (Medical Malpractice), line 17 (Other Liability), and line 18 (Products Liability).

Signed: _____
 Print Name: _____
 Title: _____
 Telephone: _____
 Date: _____

DISKETTE REQUEST FORM

Mr. Eric C. Lowe
 Insurance Market Examiner
 Bureau of Insurance
 Post Office Box 1157
 Richmond, Virginia 23209

**RE: Administrative Letter 1994-1 Supplemental Report
 Diskette Request Form**

Dear Mr. Lowe:

-- Our computer system can use both 3 1/2" high density (1.4M) and 5 1/4" low density (360K) diskettes.
 Yes _____ No _____

-- Our computer system requires that we use only:
 3 1/2" high density (1.4M) _____
 5 1/4" low density (360K) _____

Please forward the diskette program for the following company(s):
 NOTE #1: All Companies licensed in Virginia for liability must be included on this list regardless of written premium size and even if the Company had no written premium for 1992 or 1993.

NAIC	Company
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

MAIL DISKETTE TO: _____
 (Please Type or Print) Name _____
 Title _____
 Address _____

 Phone Number _____ Date _____

State Corporation Commission

* * * * *

February 17, 1994

Administrative Letter 1994 - 2

TO: All Companies Licensed to Write Commercial Liability Insurance

RE: Report of Certain Liability Claims as Required by Virginia Code Section 38.2-2228.1 due September 1, 1994

Virginia Code Section 38.2-2228.1 requires that all liability claims for commercial liability insurance as defined in Sections 38.2-117 (Personal Injury Liability) and 38.2-118 (Property Damage Liability) be reported annually to the State Corporation Commission (SCC). The SCC Bureau of Insurance has developed the attached exhibits and reporting forms that insurers should utilize to meet the data reporting requirements of the Code.

A separate report must be submitted for each market definition by each insurer not exempt from the data reporting requirements. For the purposes of the data report, "insurer" shall mean an individual insurer or a group of insurers under common ownership or control. A combined report must indicate that it is a group report and must include the group name and Group NAIC number as well as the name and NAIC number of each individual insurer comprising the group. The reports, or exemption forms, must be filed by September 1, 1994.

Mutual assessment insurers are exempt from all reporting requirements. Other insurers with 1993 written premiums for "Other Liability", "Products Liability" and "Medical Professional Liability" (lines 17, 18, and 11 respectively of page 14 of the Annual Statement) combined totaling \$100,000 or less are exempt from the data reporting requirements. Insurers claiming the premium volume exemption should refer to Exhibit 1 for instructions on completing the exemption form (Exhibit 2).

Insurers not exempted by the paragraph above shall report data in the detail prescribed by the report formats. If some information is not available, insurers should estimate appropriate figures to complete the report forms. Any insurer that is experiencing difficulty in completing typed reporting form numbers VCR1, VCR2, VCR3, VCR4, VCR5, and VCR6 may reproduce these forms, enlarging the size of the page but not changing the layout or format, in order to insure readability.

The market definitions provided in Exhibit 3 are to be used as a guide in defining specific markets which are required to be reported. Insurers should also report the required information for policies written under any comparable classification in use by the individual insurer.

Insurance Services Office (ISO) members or subscribers should contact their liaison officer for assistance regarding the computerized transmission of data.

Should you have any questions, please direct them to:

Eric C. Lowe
Insurance Market Examiner
Property and Casualty Division
State Corporation Commission
Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219
(804) 371-9628

Virginia Code Section 38.2-218 provides that any person who knowingly or willfully violates any provision of the insurance laws shall be punished for each violation by a penalty of not more than \$5,000. Failure to file a substantially complete and accurate liability claims report by the due date may be considered a willful violation and may subject the insurer to an appropriate penalty.

/s/ Steven T. Foster
Commissioner of Insurance

V.A.R. Doc. No. R94-630; Filed March 1, 1994, 12:04 p.m.

NOTICE: The following forms can be obtained from Eric Lowe, State Corporation Commission, Bureau of Insurance, Tyler Building, 1300 E. Main Street, Richmond, VA, telephone (804) 371-9628.

**EXHIBIT 1
GENERAL LIABILITY CLAIMS REPORT
COMPLETION INSTRUCTIONS AND DEFINITIONS**

The following outline will assist insurers in properly completing the claims reports. Determine the applicable individual reporting method and follow the instructions for that section only. Insurers should review the definitions section at the end of this exhibit for further completion instructions.

Reports for all insurers, regardless of reporting method, must include the complete verbal name and NAIC number of each individual insurer. The group name and number are required if the reports are on a group basis. Be sure to list all insurers within the group.

Reports must be filed by September 1, 1994.

Determine the applicable reporting method and refer to the following specific instructions for that method.

I. EXEMPT INSURERS:

- A. If the insurer had no written premium in 1993 for Line 18 - Products Liability, Line 17 - Other Liability, and Line 11 - Medical Professional Liability as reported on page 14 of the annual statement, then only Exhibit 2 of this Administrative Letter must be filed. Please indicate in the "Zero Premium" column A of Exhibit 2 all of the lines with no written premiums.
- B. If the insurer had a combined written premium in 1993 totaling \$100,000 or less for Line 17 - Other Liability, Line 18 - Products Liability, and Line 11 - Medical Professional as reported on page 14 of the annual statement, file only Exhibit 2. Indicate those lines with written premiums and those lines with no written premiums by checking the appropriate Column of Exhibit 2.
- C. Mutual Assessment insurers are exempt from the data reporting requirements and no response to this Administrative Letter is required.

NOTE: Insurers exempted under A or B above must file Exhibit 2 by September 1, 1994, to record the exemption from the data reporting requirements.

II. INSURERS USING ISO MAGNETIC TAPE REPORTING SERVICES:

- A. The ISO Liaison Officer will be the insurer's contact for the procurement of these services.
- B. Tapes submitted from ISO must be clearly labeled with the names and NAIC numbers of all of the insurers for which data is included on the tape. This label must be attached to the tape reel.
- C. Any corrections to the tape data submitted must be made on the ISO paper reports that accompany the tapes. All reports with corrections made must be clearly noted in red ink on the first page of the corrected report.

- D. Complete Exhibit 2 to indicate those market definitions with no written premiums in 1993. All other market definitions should be reported by ISO on the tape.
- E. The tape, Exhibit 2, and the corrected paper reports, if any, must be filed by September 1, 1994. Failure to submit by this date may subject the insurer to penalties as outlined in the Administrative Letter.

III. INSURERS REPORTING ON PAPER (VCR1-6):

- A. Do not change the report layout or format. The form may be enlarged to ensure readability and to ease completion. An example of the proper method of completing the triangles and correct valuation dates is provided with the VCR forms.
- B. Only one report should be submitted per market definition and per coverage code. Coverage codes are shown on VCR1 (1/94) and market definitions are shown in Exhibit 3. Do not combine markets or sublines and do not separate classifications within a market definition.
- C. Deductible and non-deductible liability data should be combined within market definitions.
- D. Bodily Injury, Property Damage, and Medical Payments data should be combined within market definitions.
- E. Complete Exhibit 2 to indicate those market definitions with no written premiums in 1993.
- F. The reports and Exhibit 2 must be filed by September 1, 1994. Failure to submit by this date may subject insurers to penalties as outlined in the Administrative Letter.

IV. REPORTING ON DISKETTE PROHIBITED

- A. Information will not be accepted on computer diskette from any insurer for the 1994 reports.

**VIRGINIA LIABILITY CLAIMS REPORT
DEFINITIONS**

Calendar Year Earned Premium

Report premium that is earned during the Calendar year beginning January 1st and ending December 31st for each year.

Incurred But Not Reported (IBNR) Loss and Allocated Loss Adjustment Expenses

Report IBNR loss and allocated loss adjustment expense reserves segregated by year of accident or occurrence at annual intervals for each accident year. IBNR is the amount held in reserve for claims which have occurred, but have not yet been reported, plus the amount held in reserve for the deficiency (or redundancy) of known case reserves. It is the estimated ultimate incurred loss and allocated loss adjustment expenses for each accident year as of the particular evaluation date, minus the incurred loss and allocated loss adjustment expenses for all reported accidents as of the particular evaluation date.

Evaluation Dates

Report data on a cumulative basis for the valuation points indicated up to 108 months for IBNR (VCR6) and 114 months for all other (VCR 2-5) requested information. The Data should be evaluated through June 30, 1993, for all data items unless otherwise specified in the question.

Market Definitions

The attached Insurance Services Office (ISO) Commercial Statistical Plan (CSP) subline and classification codes are to be used as a guide in defining specific markets which are required to be reported. Insurers should also report the required premium and loss data written under any comparable classification in use by the individual insurer.

Attorney's Fees

Attorney's fees are all expenses billed by an attorney to the insurer including hourly billings, expert or other witnesses, stenographic, summons and copies of documents.

**EXHIBIT 2
EXEMPTION REQUEST FORM**

INSURER _____ NAIC # _____

Check Column A when you had no written premium in 1993. Check Column B when you had 1993 written premiums of \$100,000, or less, for "Other Liability", "Medical Professional Liability", and "Products Liability" combined (lines 17, 18, and 11 respectively of page 14 of the Annual Statement).

	<u>Column A</u> Zero Premium	<u>Column B</u> Less Than \$100,000
C0001 OWNERS LANDLORDS AND TENANTS INCLUDING STOREKEEPERS' LIABILITY	_____	_____
C0011 MANUFACTURERS AND CONTRACTORS LIABILITY	_____	_____
C0022 PREMISES/OPERATIONS LIABILITY	_____	_____
C0023 LIQUOR LIABILITY	_____	_____
C0024 PROFESSIONAL LIABILITY OTHER THAN MEDICAL AND LAWYERS	_____	_____
C0030 LAWYERS PROFESSIONAL LIABILITY	_____	_____
C0031 DIRECTORS AND OFFICERS LIABILITY	_____	_____
C0032 ENVIRONMENTAL IMPAIRMENT LIABILITY	_____	_____
C0033 PRODUCTS AND COMPLETED OPERATIONS LIABILITY	_____	_____
C0034 CONTRACTUAL LIABILITY	_____	_____
C0035 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY	_____	_____
C0036 COMMERCIAL UMBRELLA LIABILITY	_____	_____
C0037 MEDICAL PROFESSIONAL LIABILITY	_____	_____
C0099 ALL OTHER COMMERCIAL LIABILITY NOT REPORTED IN ANY OF THE ABOVE MARKETS INCLUDING COMPOSITE RATED RISKS AND EXCESS INSURANCE NOT INCLUDED IN C0036	_____	_____

Signed: _____

Title: _____

Telephone: _____

Print Name: _____

Date: _____

State Corporation Commission

EXHIBIT 3 Market Definitions

Market Number and Name	Commercial Statistical Plan (CSP) Classes
C0001 OWNERS LANDLORDS AND TENANTS INCLUDING STOREKEEPERS' LIABILITY	All Subline 314 Classes and 326 Classes
C0011 MANUFACTURERS AND CONTRACTORS LIABILITY	All Subline 313 Classes
C0022 PREMISES/OPERATIONS LIABILITY	All Subline 334 Classes
C0023 LIQUOR LIABILITY	All Subline 312 and 332 Classes
C0024 PROFESSIONAL LIABILITY OTHER THAN MEDICAL AND LAWYERS	All Subline 317 Classes
C0030 LAWYERS PROFESSIONAL LIABILITY	Subline 317 Classes 81220, 81113, 81330, 81114, 81400, and 81420.
C0031 DIRECTORS AND OFFICERS LIABILITY	73140, 73144, 73145 (Subline 317)
C0032 ENVIRONMENTAL IMPAIRMENT LIABILITY	Subline 325 Class 90000, and Subline 350 Classes 90100, 90105, and 90110
C0033 PRODUCTS AND COMPLETED OPERATIONS LIABILITY	All Subline 316 and 336 Classes
C0034 CONTRACTUAL LIABILITY	All Subline 311 Classes and Vehicle Service Contracts
C0035 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY	All Subline 315 and 335 Classes
C0036 COMMERCIAL UMBRELLA LIABILITY	99935 (Subline 325)
C0037 MEDICAL PROFESSIONAL LIABILITY	All Subline 210, 220, 230, 240, 250, 260, 270 and 280 Classes
C0099 ALL OTHER COMMERCIAL LIABILITY NOT REPORTED IN ANY OF THE ABOVE MARKETS INCLUDING COMPOSITE RATED RISKS AND EXCESS INSURANCE NOT INCLUDED IN C0036	All Subline 325 Classes not reported above All Subline 322, 323, 324, 342, 343 and 344 Classes All Commercial General liability excess classes not including excess auto or excess WC

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

7. Market _____
(from #1 on VCRI)

Coverage Code

(Please check one only)

1. Claims Made
2. Claims Made Tail Coverage
3. Occurrence
4. Claims Made - No retroactive date
5. Claims Made Tail - No retroactive date

8. For accident years beginning with 1984, list the cumulative paid loss and allocated loss adjustment expense at the various points in time.

Example For the Completion of the Triangles, Showing the Required Valuation Dates for the Requested Data Evaluated Through 6-30-93

This example should be used as a guide for VCR2-VCR4, and for VCR5 without omitting 000's
(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1984	XXX	12-84	3-85	6-85	9-85	12-85	3-86	6-86	9-86	12-86	3-87	6-87	9-87	12-87	3-88	6-88	9-88	12-88
1985	XXX	12-85	3-86	6-86	9-86	12-86	3-87	6-87	9-87	12-87	3-88	6-88	9-88	12-88	3-89	6-89	9-89	12-89
1986	XXX	12-86	3-87	6-87	9-87	12-87	3-88	6-88	9-88	12-88	3-89	6-89	9-89	12-89	3-90	6-90	9-90	12-90
1987	XXX	12-87	3-88	6-88	9-88	12-88	3-89	6-89	9-89	12-89	3-90	6-90	9-90	12-90	3-91	6-91	9-91	12-91
1988	XXX	12-88	3-89	6-89	9-89	12-89	3-90	6-90	9-90	12-90	3-91	6-91	9-91	12-91	3-92	6-92	9-92	12-92
1989	XXX	12-89	3-90	6-90	9-90	12-90	3-91	6-91	9-91	12-91	3-92	6-92	9-92	12-92	3-93	6-93		
1990	XXX	12-90	3-91	6-91	9-91	12-91	3-92	6-92	9-92	12-92	3-93	6-93						
1991	XXX	12-91	3-92	6-92	9-92	12-92	3-93	6-93										
1992	XXX	12-92	3-93	6-93														
1993	6-93																	

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1984	3-89	6-89	9-89	12-89	3-90	6-90	9-90	12-90	3-91	6-91	9-91	12-91	3-92	6-92	9-92	12-92	3-93	6-93
1985	3-90	6-90	9-90	12-90	3-91	6-91	9-91	12-91	3-92	6-92	9-92	12-92	3-93	6-93				
1986	3-91	6-91	9-91	12-91	3-92	6-92	9-92	12-92	3-93	6-93								
1987	3-92	6-92	9-92	12-92	3-93	6-93												
1988	3-93	6-93																
1989																		
1990																		
1991																		
1992																		
1993																		

EXAMPLE VCR2-5

DO NOT PUT NUMBERS IN THE SHADED AREAS

State Corporation Commission

ANNUAL REPORT OF VIRGINIA COMMERCIAL LIABILITY CLAIMS AS REQUIRED BY SECTION 38.2-2228.1 OF THE CODE OF VIRGINIA

Insurer: REGISTER OF REGULATORS COMPANY NAIC # _____
 Address: 94 HENRY STREET, SUITE 205 (and if Group Report GROUP NAIC#) _____

This report is due September 1, 1994. For each market described in the attached, provide the information requested for the State of Virginia.

- Coverage Code
(Please check one only)
1. Claims Made
 2. Claims Made Tail Coverage
 3. Occurrence
 4. Claims Made - No retroactive date
 5. Claims Made Tail - No retroactive date

1. Market number and description (see Exhibit 3) _____

(\$000 omitted)

	1987	1988	1989	1990	1991	1992	6 months 1993
2. Calendar year earned premium.	_____	_____	_____	_____	_____	_____	_____
3. Total amount of attorney's fees paid in connection with the claim(s) to the extent these amounts are known (evaluated as of 3/31/93 on an accident year basis).	_____	_____	_____	_____	_____	_____	XXX
4. Total amount of paid and outstanding unallocated loss adjustment expense in connection with the claim(s) to the extent these amounts are known (evaluated as of 3/31/93 on an accident year basis).	_____	_____	_____	_____	_____	_____	XXX

5. Signed: _____ 6. Title: _____
 Telephone: _____ Print Name: _____
 Date: _____

VCR1(1/94)

VIRGINIA LIABILITY CLAIMS REPORT

Insurer NAIC # or GROUP # _____ Coverage Code
(Please check one only)

1. Claims Made
2. Claims Made Tail Coverage
3. Occurrence
4. Claims Made - No retroactive date
5. Claims Made Tail - No retroactive date

7. Market: _____ (from #1 on VCR1)

8. For accident years beginning with 1984, list the cumulative paid loss and allocated loss adjustment expense at the various points in time.

PAID LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED THROUGH 6-30-93:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990	XXX																	
1991	XXX																	
1992	XXX																	
1993	XXX																	

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		

VCR2(1/94)

DO NOT PUT NUMBERS IN THE SHADED AREAS

State Corporation Commission

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP #

REGULATORY INFORMATION

Market CL 1110-1 CH12: 05
(from #1 on VCR1)

Coverage Code

(Please check one only)

- 1. Claims Made
- 2. Claims Made Tail Coverage
- 3. Occurrence
- 4. Claims Made - No retroactive date
- 5. Claims Made Tail - No retroactive date

9. For accident years beginning with 1984, list the case outstanding loss and allocated loss adjustment expense (excluding IBNR) at the various points in time.

CASE OUTSTANDING LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED THROUGH 6-30-93:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990	XXX																	
1991	XXX																	
1992	XXX																	
1993																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		

VCR3(1/94)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP #

Coverage Code

(Please check one only)

- 1. Claims Made
- 2. Claims Made Tail Coverage
- 3. Occurrence
- 4. Claims Made - No retroactive date
- 5. Claims Made Tail - No retroactive date

10. Market _____
(from #1 on VCR1)

11. For accident years beginning with 1984, list the cumulative incurred loss and allocated loss adjustment expense (excluding IBNR) at the various points in time.
(sum of 8 and 9).

INCURRED LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSES EVALUATED THROUGH 6-30-93:

(\$000 Omitted)

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990	XXX																	
1991	XXX																	
1992	XXX																	
1993																		

Accident Year	63	66	69	72	75	78	81	84	87	90	93	96	99	102	105	108	111	114
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		

VCR4(1/94)

DO NOT PUT NUMBERS IN THE SHADED AREAS

State Corporation Commission

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

Market _____
(from #1 on VCR1) **SHRMS-1 FRI12-05**

- Coverage Code
(Please check one only)
1. Claims Made
 2. Claims Made Tail Coverage
 3. Occurrence
 4. Claims Made - No retroactive date
 5. Claims Made Tail - No retroactive date

12. For accident years beginning with 1984, list the cumulative number of incurred claims at the various points in time.

ACTUAL NUMBER OF INCURRED CLAIMS THROUGH 6-30-93:

Accident Year	6 Mos	12	15	18	21	24	27	30	33	36	39	42	45	48	51	54	57	60
1984	XXX																	
1985	XXX																	
1986	XXX																	
1987	XXX																	
1988	XXX																	
1989	XXX																	
1990	XXX																	
1991	XXX																	
1992	XXX																	
1993																		

Accident Year	63	65	69	72	75	78	81	84	87	90	93	95	99	102	105	108	111	114
1984																		
1985																		
1986																		
1987																		
1988																		
1989																		
1990																		
1991																		
1992																		
1993																		

VCR5(1/94)

DO NOT PUT NUMBERS IN THE SHADED AREAS

VIRGINIA LIABILITY CLAIMS REPORT

Insurer
NAIC # or GROUP # _____

13. Market _____
(from #1 on VCR1)

- Coverage Code
(Please check one only)
1. Claims Made
 2. Claims Made Tail Coverage
 3. Occurrence
 4. Claims Made - No retroactive date
 5. Claims Made Tail - No retroactive date

14. For accident years beginning with 1984, list the IBNR for loss and allocated loss adjustment expense for each evaluation.

INCURRED BUT NOT REPORTED (IBNR) LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE EVALUATED THROUGH 12-30-92:

(\$000 Omitted)

Accident Year	12	24	36	48	60	72	84	96	108
1984									
1985									
1986									
1987									
1988									
1989									
1990									
1991									
1992									
1993									

SHRMS-1 FRI12-05

VCR6(1/94)

DO NOT PUT NUMBERS IN THE SHADED AREAS

State Corporation Commission

* * * * *

January 11, 1994

ADMINISTRATIVE LETTER 1994 - 3

TO: All Insurers, Health Services Plans, Fraternal Benefit Societies, and Health Maintenance Organizations Licensed to Write Accident and Sickness Insurance in Virginia

RE: Medicare Supplement Insurance Premiums Comparison Lists

The State Corporation Commission Bureau of Insurance has been providing technical assistance to the Virginia Insurance Counseling and Advocacy Project (VICAP), conducted under the auspices of the Virginia Department for the Aging. Volunteer counselors and regional coordinators for VICAP need accurate information about the various Medicare supplement policies available in Virginia, and the Bureau of Insurance intends to begin providing such information to VICAP commencing in 1994.

One of the primary objectives of Medicare supplement standardization is to make it possible to compare premiums and benefits among companies and policies. The Bureau of Insurance realizes that consumers will benefit most fully only if they have easy access to premium and benefit information about all plans approved in Virginia. We are seeking to accomplish this by compiling and publishing a Medicare supplement premium list. Your assistance is requested in the collection and distribution of this data. While the Bureau cannot compel insurers to provide the information requested herein, insurers failing to provide the requested information by the due date (February 1, 1994) will not be included on the list provided to VICAP volunteers and to consumers in Virginia.

Since it is impractical to produce charts showing the premiums at every age for every plan, Virginia, like other states, is adopting an approach that will show the premiums at 5 year intervals for Plans A-J for five (5) different categories:

1. Medicare eligible purchased at age 65;
2. Medicare eligible purchased at age 70;
3. Medicare eligible purchased at age 75;
4. Medicare eligible purchased at age 80;
5. Medicare eligible under age 65 - Disabled

We are requesting that the following information be included:

Company: Please fill in your company name as you would want it to appear in our premium publication. If the name is too long for the space, please make an acceptable

abbreviation.

Phone Number: If available, show a toll-free number that may be used by potential customers seeking policy information. If toll-free is not available, show the area code with the toll number.

Area: If you do not have area rating (i.e. all residents of this state would pay the same premium) enter "A". If there are geographic differences in premiums, enter "Z" and show premiums for a resident of Richmond zip code. Richmond - 232

Sex: If your rates are unisex, enter M/F. If not, enter M for the male rate, and F for the female.

Prem Type (Premium type): If the policy is rated on an attained age basis, enter AA. If it is rated at issue age, enter IA.

Guar. Issue: Enter N unless the policy will be issued without regard to the applicant's health (outside the open enrollment period). If applicant cannot be rejected for health reasons, enter Y. If there is a mix (e.g. underwriting only plans, H, I, J) enter Y and explain the deviations.

Crossover: Enter Y if the policy is included in a crossover contract between your company and Medicare, providing for Medicare to forward claims directly to the company. Enter N if there is no crossover service other than that required when policyholders use participating providers.

Pre-Ex Wait: Enter the number of months the new policyholder must wait before pre-existing medical conditions will be covered (assuming it is not a replacement policy).

Date Approved: Enter the date these rates were approved by the Bureau of Insurance.

Policy Fee: Enter the amount of any one-time fee required of the purchaser (whether called "policy fee," "Membership fee," etc.).

Premiums: Compute annual premiums which will be in effect on February 1, 1994. Include any fees imposed for payment in installments rather than single annual payment.

If you do not offer a specific plan, leave that space blank.

Round off to the nearest dollar.

It is the Bureau's intention to request an updated premium list (using the same format as the attached chart) by December 1 of each year. Lists will be published annually in February.

Please return the attached completed charts no later than February 1, 1994 to:

STATE LOTTERY DEPARTMENT

DIRECTOR'S ORDER NUMBER EIGHT (94)

"CASH 5 GETAWAY GIVEAWAY"; PROMOTIONAL GAME AND DRAWING RULES.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the "Cash 5 Getaway Giveaway" promotional game and drawing rules for the promotional events for Virginia's fourth on-line game lottery. The promotional will be conducted from Monday, February 7 through Saturday, March 26, 1994. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect until March 31, 1994, unless otherwise extended by the Director.

/s/ Kenneth W. Thorson
 Director
 Date: February 7, 1994

VA.R. Doc. No. R94-664; Filed March 2, 1994, 9:53 a.m.

DIRECTOR'S ORDER NUMBER NINE (94)

CERTAIN DIRECTOR'S ORDERS RESCINDED

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby rescind the following Director's Orders:

Order Number	Date Issued	Subject
23(90)	07/31/90	Virginia's Thirteenth Instant Game Lottery; "Catch of the Day," Final Rules for Game Operation.
01(91)	01/14/91	Virginia's Sixteenth Instant Game Lottery; "Break the Bank," Final Rules for Game Operation.
11(91)	05/01/91	Virginia's Eighteenth Instant Game Lottery; "Lucky 21," Final Rules for Game Operation.
18(91)	07/24/91	Virginia's Nineteenth Instant Game Lottery; "Joker's Wild," Final Rules for Game Operation; Revised.

26(91)	10/18/91	Virginia's Twenty-First Instant Game Lottery; "Magic Number," Final Rules for Game Operation.
06(92)	03/03/92	Virginia's Twenty-Fourth Instant Game Lottery; "Break the Bank," Final Rules for Game Operation.
07(92)	03/03/92	Virginia's Twenty-Fifth Instant Game Lottery; "Lucky 21," Final Rules for Game Operation.
09(92)	03/03/92	Virginia's Nineteenth Instant Game Lottery; "Joker's Wild," End of Game.
15(92)	05/27/92	"Red Hot Summer Cash"; Virginia Lottery Retailer Sales Promotional Program Rules.
25(92)	10/19/92	"Season's Greenings"; Virginia Lottery Retailer Cashing Promotional Program Rules.
29(92)	12/28/92	"A Fist Full of Dollars"; Virginia Lottery Retailer Promotional Program Rules.
06(93)	02/05/93	Instant Game 33 Virginia Lottery Retailer Promotional Program Rules.
09(93)	02/25/93	Virginia's Thirteenth Instant Game Lottery; "Catch of the Day," End of Game.
10(93)	04/07/93	"Cash 5 Bahamas Sweepstakes"; Final Rules for Game Operation.
15(93)	05/06/93	Virginia's Eighteenth and Twenty-Fifth Instant Game Lottery, "Lucky 21," and Virginia's Twenty-First Instant Game Lottery, "Magic Number"; End of Game.
20(93)	06/25/93	"Watch 'n Win"; Promotional Game and Drawing Rules.
21(93)	06/28/93	Instant Game 36 Virginia Lottery Retailer Promotional Program Rules.
22(93)	07/16/93	Virginia's Sixteenth and Twenty-Fourth Instant Game Lottery, "Break the Bank"; End of Game.
28(93)	09/20/93	"Lotto By Mail Promotion"; Final Rules for Game Operation.
32(93)	10/25/93	"The Big Deal," Virginia Lottery Retailer Promotional Program and Rules.

This Director's Order becomes effective on the date of

its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: February 22, 1994

VA.R. Doc. No. R94-665; Filed March 2, 1994, 9:53 a.m.

DIRECTOR'S ORDER NUMBER TEN (94)

VIRGINIA'S "CASH 5" FREE TICKET GIVEAWAY GAME;
FINAL RULES FOR GAME OPERATION; REVISED.

In accordance with the authority granted by Section 58.1-4006A of the Code of Virginia, I hereby promulgate the revised "Cash 5" Free Ticket Giveaway game rules for the promotional events for Virginia's fourth on-line game lottery. The promotion will be conducted from January 31, 1994 until such time as the two millionth free Cash 5 ticket is given away. These rules amplify and conform to the duly adopted State Lottery Board regulations for the conduct of lotteries.

The rules are available for inspection and copying during normal business hours at the State Lottery Department headquarters, 2201 West Broad Street, Richmond, Virginia, and at each of the State Lottery Department regional offices. A copy may be requested by mail by writing to: Marketing Division, State Lottery Department, P. O. Box 4689, Richmond, Virginia 23220.

This Director's Order supersedes Director's Order Number Four (94), issued January 25, 1994. The order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Kenneth W. Thorson
Director
Date: March 1, 1994

VA.R. Doc. No. R94-663; Filed March 2, 1994, 9:53 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER FOUR (94)

DECLARATION OF EMERGENCY PURSUANT TO 49 CFR SECTION 390.23 ARISING FROM SEVERE WEATHER WHICH SWEEPED THE COMMONWEALTH

On January 17, 1994, Virginia began to experience severe winter weather – consisting of extremely low temperatures, heavy snowfall, high winds, sleet, and freezing rains – across the Commonwealth. Homes and agribusiness, including poultry and livestock, are being adversely affected by interruption of truck delivery of essential heating fuels caused by the inability of fuel suppliers to meet increased consumer needs due to the severe winter weather. Truck delivery is the only practical means of transporting heating fuels to most users.

The health and general welfare of the citizens of the Commonwealth required that action be taken to help alleviate the conditions which are the result of this situation. I found that these general wintry conditions, and the consequent interruption of delivery of heating fuels, constitutes an emergency within the definition of 49 CFR Section 390.5.

Therefore, by virtue of the authority vested in me as Governor by Section 44-1.146.17 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I do hereby confirm, ratify, and memorialize in writing my verbal orders issued January 18, 1994, declaring an emergency pursuant to 49 CFR Section 390.23, subject to the applicable limitations thereof. This declaration relieves motor carriers and drivers providing emergency relief in the form of heating fuels delivery from the requirements of 49 CFR Parts 390 through 399, including the provisions thereof limiting hours of service of drivers, to ensure that heating fuels delivery can be made where needed as expeditiously as possible.

This Executive Order shall be retroactively effective to January 18, 1994, upon its signing. Consistent with 49 CFR Section 390.23, this declaration will remain in effect for the duration of the emergency or 30 days (through February 16, 1994), whichever is less.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 24th day of January, 1994.

/s/ George Allen
Governor

V.A.R. Doc. No. R94-619; Filed February 22, 1994, 9:21 a.m.

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

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).

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor

Date: February 25, 1994

V.A.R. Doc. No. R94-638; Filed March 1, 1994, 11 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).

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor

Date: February 25, 1994

V.A.R. Doc. No. R94-637; Filed March 1, 1994, 11 a.m.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Title of Regulation: VR 130-01-1. Public Participation Guidelines (REPEAL).

Title of Regulation: VR 130-01-1:1. Public Participation Guidelines.

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor

Date: February 25, 1994

V.A.R. Doc. No. R94-640; Filed March 1, 1994, 11 a.m.

BOARD FOR BRANCH PILOTS

Title of Regulation: VR 535-01-00. Public Participation Guidelines (REPEAL).

Title of Regulation: VR 535-01-00:1. Public Participation Guidelines.

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-639; Filed March 1, 1994, 11 a.m.

STATE EDUCATION ASSISTANCE AUTHORITY

Title of Regulation: VR 275-00-1. Public Participation Guidelines.

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 22, 1994

V.A.R. Doc. No. R94-625; Filed February 24, 1994, 11:40 a.m.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: VR 355-30-000. Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

Governor's Comment:

I reserve my right to make final comments on this regulation after the close of the public comment period and prior to final promulgation.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-642; Filed March 1, 1994, 11 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 (REPEAL).

VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement I to Attachment 3.1-C).

VR 460-04-4.3910. Regulations for Preadmission Screening and Annual Resident Review.

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-643; Filed March 1, 1994, 11 a.m.

Title of Regulations: 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 I to Attachment 3.1 A & B).

VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality Care (Attachment 3.1 C).

VR 460-03-3.1301. Nursing Facility and MR Criteria (Supplement I 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.

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-646; Filed March 1, 1994, 11 a.m.

Title of Regulations: State Plan for Medical Assistance Relating to Home Health Reimbursement.

VR 460-03-4.1923. Establishment of Rate Per Visit.

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 25, 1994

Governor

V.A.R. Doc. No. R94-644; Filed March 1, 1994, 11 a.m.

Title of Regulations: **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.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-645; Filed March 1, 1994, 11 a.m.

BOARD OF MEDICINE

Title of Regulation: **VR 465-01-1. Public Participation Guidelines (REPEAL).**

Title of Regulation: **VR 465-01-1:1. Public Participation Guidelines.**

Governor's Comment:

I reserve my right to make final comments on this regulation after the close of the public comment period and prior to final promulgation.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-641; Filed March 1, 1994, 11 a.m.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

Title of Regulation: **VR 615-01-51. Auxiliary Grants Program: Levels of Care and Rate Setting.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 21, 1994

V.A.R. Doc. No. R94-626; Filed February 24, 1994, 11:40 a.m.

Title of Regulation: **VR 615-22-02. Standards and**

Regulations for Licensed Homes for Adults (REPEAL).

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 21, 1994

V.A.R. Doc. No. R94-623; Filed February 24, 1994, 11:40 a.m.

Title of Regulation: **VR 615-22-02:1. Standards and Regulations for Licensed Adult Care Residences.**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 21, 1994

V.A.R. Doc. No. R94-624; Filed February 24, 1994, 11:40 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).**

Governor's Comment:

I reserve my right to make final comments on this regulation after review of the public's comments.

/s/ George Allen
Governor
Date: February 25, 1994

V.A.R. Doc. No. R94-636; Filed March 1, 1994, 11 a.m.

GENERAL NOTICES/ERRATA

Symbol Key †

† Indicates entries since last publication of the Virginia Register

GENERAL NOTICES

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† Public Notice

A referendum subject to § 3.1-684.23 of the Code of Virginia will be conducted by mail ballot among Virginia Irish potato producers who produced at least 40,000 pounds of Irish potatoes during 1993.

The purpose of this referendum is to determine if Virginia Irish potato producers are willing to tax themselves for additional research, education, publicity, advertising and other means of promoting the sale and use of Irish potatoes.

The assessment to be voted on is two cents per hundred pounds when sold, to be deducted by the packer, shipper, processor or handler who first purchases Irish potatoes from the producer. The term "handler" shall include a farmer who packs, processes or otherwise performs the function of a handler. The excise tax levied thereon shall be remitted to the Virginia Irish Potato Commission.

Producers must establish their eligibility to vote in this referendum by properly completing and returning a certification form to the Virginia Department of Agriculture and Consumer Services no later than April 22, 1994.

Eligible voters will be mailed a ballot and return envelope on May 20, 1994. Each eligible voter must return the ballot and the ballot must be received by the Director, Division of Marketing, Virginia Department of Agriculture and Consumer Services on or before June 6, 1994.

Forms to certify eligibility will be mailed to all known Irish potato producers. Producers who do not receive forms in the mail may obtain eligibility certification forms from the following sources:

Association of Virginia Potato and Vegetable Growers, Inc.
P.O. Box 26
Onley, Virginia 23418

or

Virginia Department of Agriculture and Consumer Services

Washington Building, Suite 1003
Capitol Square
1100 Bank Street
Richmond, Virginia 23219

Forms may also be obtained from local county extension offices.

VIRGINIA CODE COMMISSION

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 FAX two copies and 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.

General Notices/Errata

ERRATA

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Regulation: VR 394-01-2. Virginia Certification Standards/1993.

Publication: 10:10 VA.R. 2634-2643 February 7, 1994.

Corrections to Final Regulation:

Page 2635, strike the entire definition of "Contractor"

Page 2636, definition of "Tradesman," line 2, after "public" strike "or"

Page 2637, § 2.1 A, line 4, change "license" to "licensing"

Page 2638, § 2.7, line 14, change "agency" to "agent"

* * * * *

Title of Regulation: VR 394-01-31. Virginia Industrialized Building and Manufactured Home Safety Regulations/1993.

Publication: 10:10 VA.R. 2612-2723 February 7, 1994.

Correction to Final Regulation:

Page 2719, Section 1101.2, line 6, strike "Regulatory Services" and insert "Regulation"

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

- † April 25, 1994 - 10 a.m. - Open Meeting
 - † April 26, 1994 - 8 a.m. - Open Meeting
- Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting to (i) review applications; (ii) review correspondence; (iii) conduct review and disposition of enforcement files; (iv) conduct regulatory review; and (v) conduct routine board business. A public comment period will be scheduled during the meeting. No public comment will be accepted after that period; however, the meeting is open to the public. Any person who needs accommodations in order to participate at the meeting should contact Nancy T. Feldman at (804) 367-8590 at least 10 days before the meeting date so that suitable arrangements can be made for an appropriate accommodation.

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

Continuing Professional Education Committee

- March 25, 1994 - 10 a.m. - Open Meeting
- Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting to review the Continuing Professional Education Program and associated regulations.

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

Regulatory Review Committee

April 5, 1994 - 9:30 a.m. - Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, 4th Floor, Richmond, Virginia. ☒

A meeting to:

1. Review fee adjustment options
2. Modify CPE requirements
3. Review reporting requirements for criminal convictions and findings in civil proceedings
4. Change § 5.3 of the regulations by changing "or" to "and"
5. Consider new regulation-license holder to certificate status conversion to license holder
5. Review agreement for endorsement with Canadian provinces
6. Review registration of all CPA businesses
7. Review licensure of out-of-state CPAs doing business in the Commonwealth
8. Review other amendments
9. Consider change in education hours

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8590.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Virginia Farmers' Market Board

- † March 22, 1994 - 1 p.m. - Open Meeting
- State Capitol Building, Capitol Square, House Room 1,
Richmond, Virginia. ☒

At this meeting there will be updates on the General Assembly and the budget, Southside Farmers' Market operations and the Southwest proposal. Any person who needs accommodation in order to participate at the meeting should contact Nancy Israel at least seven days before the meeting so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion

Calendar of Events

of all other business for a period not to exceed 30 minutes.

Contact: Nancy Israel, Program Manager, Washington Bldg, 1100 Bank St., Richmond, VA 23219, telephone (804) 371-6157.

Virginia Peanut Board

March 23, 1994 - 10 a.m. - Open Meeting
Tidewater Agricultural Research and Extension Center, Suffolk, Virginia. ☒

A meeting to review peanut research projects for possible funding in 1994. Any person who needs any accommodation in order to participate at the Peanut Board meeting should contact the program director identified in this notice at least four days before the Peanut Board meeting date, so that suitable arrangements can be made for any appropriate accommodation. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes.

Contact: Russell C. Schools, Program Director, P.O. Box 356, Capron, VA 23829, telephone (804) 658-4573.

Pesticide Control Board

April 14, 1994 - 10 a.m. - Open Meeting
April 15, 1994 - 9 a.m. - Open Meeting
Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, Virginia. ☒

10 a.m., April 14, 1994 - Pesticide Control Board committee meetings

9 a.m., April 15, 1994 - A meeting to conduct general business.

Portions of the meeting may be held in closed session, pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the Pesticide Control Board's agenda at 9 a.m., April 15, 1994. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at (804) 371-6558, at least 10 days before the meeting, 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, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

* * * * *

April 14, 1994 - 7 p.m. - Public Hearing
Department of Agriculture and Consumer Affairs, 1100 Bank Street, Room 204, Richmond, Virginia.

May 9, 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 of the Code of Virginia that the Pesticide Control Board intends to amend regulations entitled: **VR 115-04-20. Rules and Regulations Governing the Pesticide Fees Charged by the Department of Agriculture and Consumer Services under the Virginia Pesticide Control Act.** The proposed amendments (i) establish a single pesticide product registration fee and increase the pesticide product registering pesticide projects each year and allow for the assessment of a late fee for pesticide products registered after the deadline; (iii) eliminate the conflict between § 3.1-249.52 of the Code of Virginia, which requires renewal and does not differentiate between pesticides classified for restricted use and other pesticides and §§ 2.2 and 2.3, which allow a commercial applicator and registered technician to avoid a late fee for failure to renew by submitting an affidavit certifying that he has not applied pesticides classified for restricted use subsequent to the expiration of his certificate; (iv) eliminate the conflict between § 3.1-249.52 C of the Code of Virginia, which provides the Pesticide Control Board authority to require reexamination of a registered technician not reinstruction as currently required in § 2.3 when the registered technician fails to renew his license within 60 days of the expiration date and establish a reexamination fee of \$15; (v) delete definitions for "commissioner," "department" and "registered technician," and (vi) add definitions for "brand" and "grade."

Statutory Authority: § 3.1-249.30 of the Code of Virginia.

Contact: Marvin A. Lawson, Ph.D., Program Manager, Office of Pesticide Management, Department of Agriculture and Consumer Services, P.O. Box 1163, 1100 Bank St., Room 401, Richmond, VA 23209, telephone (804) 371-6558.

Virginia Winegrowers Advisory Board

† **April 19, 1994 - 10 a.m. - Open Meeting**
Omni Charlottesville, 235 West Main Street, Charlottesville, Virginia. ☒

A meeting to hear committee and project monitor reports, hear presentations on proposals for funding, and discuss old and new business. Any person who needs any accommodation in order to participate at the meeting should contact Wendy Rizzo 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, P.O. Box 1163, Richmond, VA 23209, telephone (804) 786-0481.

VIRGINIA AGRICULTURAL COUNCIL

March 28, 1994 - 8:30 a.m. – Open Meeting
March 29, 1994 - 8:30 a.m. – Open Meeting
Sheraton Inn, 2350 Seminole Trail, Charlottesville, Virginia.
♠ (Interpreter for the deaf provided upon request)

A meeting to hear and act upon project proposals for financial assistance through the Virginia Agricultural Council. The council will entertain public comment at the close of all other business for a period not to exceed 30 minutes. Any person who needs accommodation in order to participate during the meeting should contact the Assistant Secretary to the Virginia Agricultural Council at least 10 days before the meeting date so that suitable arrangements can be made for appropriate accommodation.

Contact: Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, 1100 Bank Street, Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

ALCOHOLIC BEVERAGE CONTROL BOARD

March 21, 1994 - 9:30 a.m. – Open Meeting
April 4, 1994 - 9:30 a.m. – Open Meeting
April 18, 1994 - 9:30 a.m. – Open Meeting
Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, Virginia. ♠

A meeting to receive and discuss reports and activities from staff members. Other matters not yet determined.

Contact: Robert N. Swinson, Secretary to the Board, Alcoholic Beverage Control Board, 2901 Hermitage Road, Richmond, VA 23261, telephone (804) 367-0616.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Interior Designers

† **March 25, 1994 - 1:30 p.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 5th Floor, Richmond, Virginia. ♠

A meeting to (i) approve minutes from September 17, 1993, meeting; (ii) review applications; and (iii) review correspondence.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

March 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 Audiology and Speech-Language Pathology intends to amend regulations entitled: **VR 155-01-2.1. Regulations of the Board of Audiology and Speech-Language Pathology.** The purpose of the proposed amendments is to delete expired requirements and incorporate legislation effective July 1, 1992.

Statutory Authority: §§ 54.1-2400 and 54.1-2600 et seq. 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

† **April 4, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. ♠

A meeting to (i) review applications; (ii) review correspondence; (iii) conduct the review and disposition of enforcement files; and (iv) conduct routine board business. A public comment period will be scheduled during the meeting. No public comment will be accepted after that period; however, the meeting is open to the public. Any person who needs accommodations or order to participate at the meeting should contact Nancy T. Feldman at (804) 367-8590 at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Nancy T. Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590.

BOARD FOR BRANCH PILOTS

March 24, 1994 - 9:30 a.m. – Public Hearing
Virginia Port Authority, 600 World Trade Center, Norfolk, Virginia.

March 24, 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 amend regulations entitled: **VR 535-01-01. Board for Branch Pilots Rules and**

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Regulations. The purpose of the proposed amendments is to adjust application and renewal fees and establish Assisted Radar Plotting Aids (ARPA) training for full and limited licensed branch pilots in Virginia.

Statutory Authority: §§ 54.1-902 and 54.1-113 of the Code of Virginia.

Contact: Willie Fobbs, III, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8514.

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Southern Area Review Committee

March 23, 1994 - 1 p.m. – Open Meeting
Chesapeake Bay Local Assistance Department, 805 East Broad Street, Suite 701, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The review committee will review Chesapeake Bay Preservation Area programs for the Southern Area. Persons interested in observing should call the Chesapeake Bay Local Assistance Department to verify meeting time, location and schedule. No comments from the public will be entertained at the review committee meeting. However, written comments are welcome.

Contact: Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☒

DEPARTMENT OF CONSERVATION AND RECREATION

Catoctin Creek Scenic River Advisory Board

† **April 8, 1994 - 2 p.m.** – Open Meeting
Waterford, Virginia.

A review of river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132 or (804) 786-2121/TDD ☒

BOARD FOR CONTRACTORS

† **March 30, 1994 - 9 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

The board will meet to (i) reconsider proposed fee structure; (ii) reconsider proposed licensing

regulations; (iii) adopt final public participation guidelines; (iv) adopt emergency regulations for Class C contractors; and (v) review disciplinary matters.

Contact: Florance R. Brassier, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917.

Recovery Fund Committee

March 23, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, Virginia. ☒

A meeting to consider claims filed against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in Executive Session.

Contact: Holly Erickson, Assistant Administrator, Recovery Fund, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23219, telephone (804) 367-8561.

DEPARTMENT OF CORRECTIONS (STATE BOARD OF)

† **April 13, 1994 - 10 a.m.** – Public Hearing
Board of Corrections Board Room, 6900 Atmore Drive, Richmond, Virginia.

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 230-01-004. Regulations for Human Subject Research.** The Human Subject Research Regulations establish under what circumstances human research is authorized and conducted within the Department of Corrections as required in § 32.1-162.16 et seq. of the Code of Virginia. In accordance with the legislation, the regulations define requirements for obtaining informed consent and require the establishment of human research review committees which review and approve all human research activities. These regulations apply to the Department of Corrections and to any facility, program or organization owned, operated, funded, or licensed by the department which conducts or which proposes to conduct or authorize research which uses human participants. Human research participants may be either employees or clients of the department.

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

Written comments may be submitted until May 23, 1994.

Contact: Dr. Larry Guenther, Agency Management Lead Analyst, Department of Corrections, P.O. Box 26963 Richmond, VA 23261, telephone (804) 674-3268.

CRIMINAL JUSTICE SERVICES BOARD

April 6, 1994 - 9 a.m. – Public Hearing
General Assembly Building, 910 Capitol Street, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Criminal 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.

Contact: Paula Scott Dehetre, Administrative Assistant, Department of Criminal Justice Services, 805 E. Broad Street, Richmond, VA 23219, telephone (804) 786-4000.

DEPARTMENT FOR THE DEAF AND HARD-OF-HEARING

† April 12, 1994 - 7 p.m. – Public Hearing
Henrico County Government Administration Building, Parham and Hungary Springs Road, Board Room, Richmond, Virginia.

† May 20, 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 for the Deaf and Hard-of-Hearing intends to **repeal regulations entitled: VR 245-01-01. Public Participation Guidelines and adopt regulations entitled: VR 245-01-01:1. Public Participation Guidelines.** This regulation requires the director to maintain a list of persons who have requested to be notified of the formation and promulgation of regulations by the department. It also requires the department to receive petitions for rulemaking, to publish a Notice of Intended Regulatory Action prior to promulgating or amending regulations, and to hold a public hearing during the 60-day comment period following the publication of a proposed regulation or amendment. Finally, this regulation allows the director to appoint an ad hoc advisory committee to assist in the review and development of regulations for the department.

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

Contact: Leslie G. Hutcheson, Special Projects Manager, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

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† April 12, 1994 - 7 p.m. – Public Hearing
Henrico County Government Administration Building, Parham and Hungary Springs Road, Board Room, Richmond, Virginia.

† May 20, 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 for the Deaf and Hard-of-Hearing intends to amend regulations entitled: **VR 245-02-01. Regulation Governing Eligibility Standards and Application Procedures of the Distribution of Technological Assistive Devices.** This regulation is to screen applicants for the Telecommunications Assistance Program (TAP) and to determine the applicant's contribution towards the purchase of telecommunications equipment, if any. The amendments allow the department to give priority to first-time applicants during times of fiscal constraint. Renewal applicants, individuals who have previously received equipment through the program, must wait five years to submit subsequent applications and must include proof that the original equipment is no longer working. Additionally, amendments may allow an applicant to request an exchange for new equipment which becomes available through TAP and is deemed a more compatible device for the applicant. Finally, amendments allow for those applicants whose income exceeds 150% of the maximum amount established by the Economic Needs Guidelines to be required to contribute 100% of the contractual cost of devices.

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

Contact: Bruce A. Sofinski, Communications and Technical Programs, Department for the Deaf and Hard-of-Hearing, 1100 Bank St., 12th Floor, Richmond, VA 23219-3640, telephone (804) 225-2570 or toll-free 1-800-552-7917.

BOARD OF DENTISTRY

March 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 Dentistry intends to amend regulations entitled: **VR 255-01-1. Virginia Board of Dentistry Regulations.** The proposed amendments set forth requirements for continuing education for dentists and dental hygienists, allow licensure by endorsement for dentists, allow specialists to advertise in a board-approved manner, provide for an administrative procedure for reinstatement of license, establish administrative fees for licensure by credentials and licensure reinstatement to cover administrative costs, and amend regulations for clarity and simplicity.

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Statutory Authority: § 54.1-2400 and Chapter 27 (§ 54.1-2700 et seq.) of Title 54.1 of the Code of Virginia.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

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March 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 Dentistry intends to adopt regulations entitled: **VR 255-01-2. Public Participation Guidelines**. The proposed regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

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

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9906.

† **April 7, 1994 - 8:30 a.m.** – Open Meeting

† **April 8, 1994 - 8:30 a.m.** – Open Meeting

Days Inn Airport, 8118 Plantation Road, Roanoke, Virginia. ☒

Formal hearings. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9906.

† **April 14, 1994 - 9 a.m.** – Open Meeting

† **April 15, 1994 - 8:30 a.m.** – Open Meeting

† **April 16, 1994 - 8:30 a.m.** – Open Meeting

Department of Health Professions, 6606 West Broad Street, Richmond, Virginia. ☒

April 14 - Formal hearings

April 15 - Board business (committee reports, final vote on regulations and regular board business)

April 16 - Board business continued

These are public meetings. A 20-minute public comment period will be held at 8:40 a.m. on April 15; however, no other public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

DISABILITY SERVICES COUNCIL

† **March 24, 1994 - 1 p.m.** – Open Meeting

Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to discuss establishment and implementation of the Rehabilitative Services Incentive Fund guidelines. This meeting will be held only if it is called by chairperson.

Contact: Allen S. Gouse, Deputy Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288, telephone (804) 662-7026, toll-free 1-800-552-5019 or (804) 662-9040/TDD ☒

DEPARTMENT OF EDUCATION (STATE BOARD OF)

† **April 25, 1994 - 1:30 p.m.** – Public Hearing

Monroe Building, 101 North 14th Street, Richmond, Virginia.

† **May 20, 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 Education intends to adopt regulations entitled: **VR 270-01-0055. Regulations for the Protection of Students as Participants in Human Research**. These proposed regulations are designed to ensure that the rights of students who may become subjects of research are protected. The regulations specifically address the rights of students in the areas of personal privacy and informed consent. These rights are protected by means of the creation in each school entity of a review committee to oversee all research involving students that is conducted within the realm of its authority.

Statutory Authority: § 22.1-16.1 of the Code of Virginia.

Contact: Lawrence McCluskey, Lead Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2762.

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† **April 5, 1994 - 7 p.m.** – Public Hearing

Luther Jackson Middle School, 3020 Gallows Road, Falls Church, Virginia.

† **June 7, 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 270-01-0060. Minimum Standards for the Accreditation**

of **Child Day Programs Serving Children of Preschool Age or Younger in Public Schools**. These regulations serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve preschool age children not subject to compulsory attendance laws.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Contact: Charles W. Finley, School Accreditation Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

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† **April 5, 1994 - 7 p.m.** – Public Hearing
Luther Jackson Middle School, 3020 Gallows Road, Falls Church, Virginia.

† **June 7, 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 270-01-0061. Minimum Standards for the Accreditation of Child Day Programs Serving School Age Children Offered in Public Schools**. These regulations serve as the basis for the accreditation of all nonmandated programs operated by public schools intended to serve school age children in before- and after-school programs and summer camps.

Statutory Authority: § 22.1-19 of the Code of Virginia.

Written comments may be submitted until June 7, 1994.

Contact: Charles W. Finley, School Accreditation Associate Specialist, Department of Education, P.O. Box 2120, Richmond, VA 23216-2120, telephone (804) 225-2747 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CHESTERFIELD

April 7, 1994 - 5:30 p.m. – Open Meeting
May 5, 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 Coordinator, Emergency Services, Chesterfield Fire Department, P. O. Box 40, Chesterfield, VA 23832, telephone (804) 748-1236.

LOCAL EMERGENCY PLANNING COMMITTEE - HENRICO

April 20, 1994 - 7 p.m. – Open Meeting
Henrico County Public Safety Building, Division of Fire, 3rd Floor, Parham and Hungary Spring Roads, Richmond, Virginia. ☒

A meeting to satisfy requirements of the Superfund Amendment and Reauthorization Act of 1986.

Contact: W. Timothy Liles, Assistant Emergency Services Coordinator, Division of Fire, P. O. Box 27032, Richmond, VA 23273, telephone (804) 672-4906.

LOCAL EMERGENCY PLANNING COMMITTEE - PRINCE WILLIAM COUNTY, MANASSAS CITY AND MANASSAS PARK CITY

† **March 21, 1994 - 1:30 p.m.** – Open Meeting
One County Complex Court, Potomac Conference Room, Prince William, Virginia. ☒

A multi-jurisdictional local emergency planning committee to discuss issues related to hazardous substances in the jurisdiction. SARA Title III provisions and responsibilities for hazardous material emergency response planning.

Contact: John E. Medici, Hazardous Materials Officer, One County Complex Court, Internal Zip MC470, Prince William, VA 22192, telephone (703) 792-6800.

LOCAL EMERGENCY PLANNING COMMITTEE - WINCHESTER

† **April 6, 1994 - 2:30 p.m.** – Open Meeting
Shawnee Fire Company, 2333 Roosevelt Boulevard, Winchester, Virginia.

A meeting to review draft proposal of updated hazardous materials contingency plan.

Contact: L.A. Miller, Fire Chief, Winchester Fire and Rescue Department, 126 N. Cameron St., Winchester, VA 22601, telephone (703) 662-2298.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Work Group on Detection/Quantitation Levels

May 4, 1994 - 1:30 p.m. – Open Meeting
Department of Environmental Quality, Lab Training Room, Room 111, 4949 Cox Road, 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

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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 May 18, June 1, June 15, June 29, July 13, July 27, August 10 and August 24. 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.

VIRGINIA FIRE SERVICES BOARD

† **April 14, 1994 - 7:30 p.m.** – Public Hearing
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia. ☒

A public hearing to discuss fire training and policies. The hearing is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

† **April 15, 1994 - 9 a.m.** – Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia. ☒

A business meeting to discuss training and fire policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire/EMS Education and Training Committee

† **April 14, 1994 - 10 a.m.** – Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia. ☒

A committee meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Fire Prevention and Control Committee

† **April 14, 1994 - 9 a.m.** – Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia. ☒

A committee meeting to discuss fire training and

policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

Legislative/Liaison Committee

† **April 14, 1994 - 1 p.m.** – Open Meeting
Holiday Inn-Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia. ☒

A committee meeting to discuss fire training and policies. The meeting is open to the public for comments and input.

Contact: Anne J. Bales, Executive Secretary Senior, Virginia Fire Services Board, 2807 Parham Rd., Suite 200, Richmond, VA 23294, telephone (804) 527-4236.

BOARD OF GAME AND INLAND FISHERIES

March 28, 1994 – Written comments may be made until 5 p.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 Game and Inland Fisheries intends to adopt regulations entitled: **VR 325-01-1. Definitions and Miscellaneous.** The purpose of the proposed amendments is to establish a fee structure for permits required by the Code of Virginia, and in accordance with Chapter 623 of the 1993 Acts of Assembly. The public hearing 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. Karen Tuck, Administrative Services Division, Department of Game and Inland Fisheries, 4010 W. Broad Street, Richmond, VA 23230, telephone (804) 367-1000 (V/TDD). Persons needing interpreter services for the deaf must notify Ms. Tuck no later than Monday, March 7, 1994. The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the guidelines.

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Contact: Mark D. Monson, Chief, Administrative Services, 4010 W. Broad Street, P. O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000/TDD ☒

BOARD FOR GEOLOGY

† **May 4, 1994 - 10 a.m.** – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

A general board meeting.

Contact: David E. 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

GEORGE MASON UNIVERSITY

Board of Visitors

March 23, 1994 - 4 p.m. - Open Meeting
George Mason University, Prince William Institute, 7946 Donegan Drive, Manassas, Virginia.

A regular meeting to hear reports of the standing committees of the board and to act on those recommendations presented by the standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it. The Student Affairs Committee will meet at 6:30 p.m. on March 22, 1994. Standing committees will meet during the day on March 23, 1994, beginning at 9 a.m.

Contact: Ann Wingblade, Administrative Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8704.

GOVERNOR'S JOB TRAINING COORDINATING COUNCIL

March 21, 1994 - 10:30 a.m. - Open Meeting
The Embassy Suites Hotel, 2925 Emerywood Parkway, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A general meeting.

Contact: Abria M. Singleton, Executive Secretary, 4615 W. Broad St., 3rd Floor, Richmond, VA 23230, telephone (804) 367-9816, toll-free 1-800-552-7020 or (804) 367-6283/TDD

DEPARTMENT OF HEALTH (STATE BOARD OF)

April 8, 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 355-01-100. Public Participation Guidelines.** These proposed amendments are identical to those contained within the emergency Public Participation Guidelines effective July 1, 1993, and promulgated to maintain the board's compliance with revisions to the Administrative Process Act effective on that same day. These revised guidelines clarify the actions to be

taken by the staff of the Department of Health to ensure participation by the interested public in the process of regulation development as well as during the comment period that occurs after draft regulations are completed and published for review. The proposed guidelines also identify how the public may initiate consideration of regulations for development or review.

Statutory Authority: §§ 9-6.14:7.1 and 32.1-12 of the Code of Virginia.

Contact: Susan R. Rowland, Assistant to the Commissioner, 1500 E. Main Street, Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

March 30, 1994 - 10 a.m. - Public Hearing
Main Street Station, 1500 East Main Street, Suite 301, Richmond, Virginia.

May 6, 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 355-30-109. Virginia State Medical Facilities Plan: Diagnostic Imaging Services.** This amendment revises a part of the Diagnostic Imaging Services of the Virginia State Medical Facilities Plan (SMFP) which provides criteria and standards for the approval of certificate of public need projects involving single photon emission computed tomography (SPECT) services. The purpose of this amendment is to allow for an expedited review of projects which involve the replacement of non-SPECT nuclear medicine imaging equipment with equipment which is capable of SPECT. This amendment to the SMFP is being proposed in conjunction with recently proposed amendments to the COPN Regulations (VR 355-30-000) which would allow such projects to be considered in accordance with the 45-day expedited review process rather than the standard 120-day batched review process.

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, 1500 E. Main St., Suite 105, Richmond, VA 23219, telephone (804) 786-7463.

April 25, 1994 - 1 p.m. - Public Hearing
Fairfax County Government Center, 1200 Government Center Parkway, Conference Room, Fairfax, Virginia.

April 27, 1994 - 1 p.m. - Public Hearing
Roanoke County Administration Center, 5204 Benard Drive,

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2nd Floor Meeting Room, Roanoke, Virginia.

April 28, 1994 - 1 p.m. - Public Hearing
Hampton City Hall, 22 Lincoln Avenue, Council Chambers,
8th Floor, Hampton, Virginia.

April 29, 1994 - 1 p.m. - Public Hearing
Albemarle County Office Building, 401 McIntire Road, 2nd
Floor, Room 7, Charlottesville, Virginia.

May 6, 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 adopt regulations entitled: **VR 355-35-700.
Swimming Pool Regulations Governing the Posting
of Water Quality Results.** The proposed regulations
require the owner of a public swimming pool to test
and post for public viewing the water quality test
results for disinfection residuals, pH, and spa water
temperatures.

Statutory Authority: §§ 32.1-12 and 32.1-248.1 of the Code
of Virginia.

Contact: John E. Benko, M.P.H., Director, Division of Food
and Environmental Services, Office of Environmental
Health Services, Suite 115, P.O. Box 2448, Richmond, VA
23219, telephone (804) 786-3559.

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April 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 Board of Health
intends to amend regulations entitled: **VR 355-40-400.
Regulations Governing the Virginia Medical
Scholarship Program.** The regulations set forth
eligibility, criteria, award process, terms, conditions,
and circumstances under which Virginia medical
scholarships will be awarded.

Statutory Authority: §§ 32.1-12, 32.1-122.5, 32.1-122.6 and
32.1-122.6:01 of the Code of Virginia.

Contact: Eula Moore, Director, Office of Primary Care
Development, Department of Health, P. O. Box 2448,
Richmond, VA 23218, telephone (804) 786-4891.

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April 25, 1994 - Written comments may be submitted is
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 Health
intends to adopt regulations entitled: **VR 355-40-700.
Rules and Regulations Governing the Virginia Nurse**

Practitioner/Nurse Midwife Scholarship Program.
The regulations provide an incentive to registered
nurses in Virginia to become nurse practitioners or
nurse midwives and subsequently provide services in
medically underserved areas.

Statutory Authority: §§ 32.1-12, 32.1-122.5 and 32.1-122.6:02
of the Code of Virginia.

Contact: Karen Connelly, Director of Public Health
Nursing, Department of Health, P. O. Box 2448, Richmond,
VA 23218, telephone (804) 371-4090 or FAX (804) 371-2911.

† **April 25, 1994 - 7 p.m.** - Open Meeting
Rappahannock Community College, Warsaw, Virginia. ☒

† **May 12, 1994 - 7 p.m.** - Open Meeting
Thomas Nelson Community College, Newport News,
Virginia. ☒

† **May 16, 1994 - 7 p.m.** - Open Meeting
Eastern Shore Community College, Melfa, Virginia. ☒

A meeting to discuss the issue surrounding the
potential for repacking of foreign crabmeat in
Virginia.

Contact: Robert J. Wittman, Deputy Director, Department
of Health, 1500 E. Main St., Suite 109, Richmond, VA
23219, telephone (804) 786-7937.

BOARD OF HEALTH PROFESSIONS

Executive/Legislation Committee

† **March 30, 1994 - 10 a.m.** - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

A meeting to prepare the 1994 plan of work for the
board, to review legislation enacted by the General
Assembly, and to review the agenda for the April 19
meeting of the full board.

Contact: Richard D. Morrison, Deputy Director for
Research, Department of Health Professions, 6606 W.
Broad St., 4th Floor, Richmond, VA 23230, telephone (804)
662-9904 or (804) 662-7197/TDD ☐

Practitioner Self-Referral Committee

† **March 30, 1994 - 1 p.m.** - Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Board Room 4, Richmond, Virginia. ☒
(Interpreter for the deaf provided upon request)

A meeting to (i) review procedures for granting
exceptions and issuing advisory opinions; (ii) establish
annual calendar for committee; and (iii) review

agency plans for detection of possible violations, investigation of complaints, disciplinary case management, and follow-up of referred cases. Public comment will not be received.

Contact: Richard D. Morrison, Deputy Director for Research, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

April 12, 1994 - 9 a.m. – Open Meeting
James Madison University, Harrisonburg, Virginia.

May 10, 1994 - 9:30 a.m. – Open Meeting
James Monroe Building, 101 North 14th Street, 9th Floor, Richmond, Virginia. ☎

June 14, 1994 - 9 a.m. – Open Meeting
Radford University, Radford, Virginia.

A general business meeting. For more information and a time confirmation, contact the council.

Contact: Anne Pratt, Associate Director, 101 N. 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2632 or (804) 371-8017/TDD ☎

STATEWIDE INDEPENDENT LIVING COUNCIL

† **March 31, 1994 - 9:30 a.m.** – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The initial meeting of the council.

Contact: Susan L. Urofsky, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019 TDD and voice or (804) 662-9040 ☎

HOPEWELL INDUSTRIAL SAFETY COUNCIL

April 5, 1994 - 9 a.m. – Open Meeting
Hopewell Community Center, Second and City Point Road, Hopewell, Virginia. ☎ (Interpreter for the deaf provided upon request)

Local Emergency Preparedness Committee Meeting on emergency preparedness as required by SARA Title III.

Contact: Robert Brown, Emergency Service Coordinator, 300 North Main Street, Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF LABOR AND INDUSTRY

April 4, 1994 - 7 p.m. – Public Hearing
General Assembly Building, House Room C, 910 Capitol Street, Richmond, Virginia.

April 22, 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 repeal regulations entitled: **VR 425-01-81. Regulation Governing the Employment of Minors on Farms, in Gardens and In Orchards** and adopt regulations entitled: **VR 425-01-81:1. Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards**. The regulation prohibits the employment of minors under 16 years of age in specified hazardous occupations on farms, in gardens and in orchards. The prohibited occupations include operating a tractor of over 20 PTO horsepower; operating or assisting to operate other heavy equipment such as pickers, combines, mowers, harvesters, bailers, grinders, augers, and tillers; operating or assisting to operate earthmoving equipment, fork-lifts, potato combines, and chain saws; working in enclosed areas occupied by dangerous animals; working from ladders; driving certain vehicles; working inside enclosed areas containing dangerous atmospheres; handling poisonous chemicals; handling blasting agents; and handling anhydrous ammonia.

The regulation exempts children below the age of 16 employed by their parents on their own farms, student learners, students in federal extension service and 4-H tractor and machine operation training programs, and students in vocational agricultural training programs. Agricultural employers are required to maintain basic records on minor employees.

The proposed regulation is drafted to be substantively identical to parallel federal child labor regulations insofar as practicable. It is not identical for the following reasons.

In certain cases regarding hazardous occupations, the Code of Virginia is more stringent than the parallel federal regulation. In these matters the department has no discretion and must comply with Virginia statutory law.

The federal child labor regulations have not been revised for many years. Certain training programs required by federal regulations no longer exist. This proposed regulation would permit the use of equivalent currently available training programs.

Since this proposed regulation will replace the Regulation Governing the Employment of Minors on Farms, in Gardens and in Orchards (VR 425-01-81,

Calendar of Events

effective July 1, 1992), the current regulation is being repealed. The agency filed an emergency regulation on June 30, 1993, which is effective through June 29, 1994.

Statutory Authority: §§ 40.1-6(3) and 40.1-100(A)(9) of the Code of Virginia.

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

Virginia Safety and Health Codes Board

April 22, 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 Safety and Health Codes Board intends to repeal regulations entitled: **VR 425-02-11. VOSH Administrative Regulations Manual.** The VOSH Administrative Regulations Manual provides an operational framework of rules and procedures for the administration of the Virginia Occupational Safety and Health Program. Some amendments have been made to the regulation since its initial adoption in 1986. A complete revision of the regulation which will simplify and clarify the language of the administrative manual is being proposed as a new regulation. This regulation will no longer be necessary and is being repealed.

Statutory Authority: §§ 40.1-6 and 40.1-22 of the Code of Virginia.

Contact: John J. Crisanti, Director, Enforcement Policy, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 786-2384.

DEPARTMENT OF LABOR AND INDUSTRY; SAFETY AND HEALTH CODES BOARD; APPRENTICESHIP COUNCIL

April 22, 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 Safety Health Codes Board; Apprenticeship Council intends to repeal regulations entitled: **VR 425-01-68. Public Participation Guidelines.** Public Participation Guidelines were adopted by the Department of Labor and Industry, the Safety and Health Codes Board, and the Apprenticeship Council on September 19, 1984. Emergency Public Participation Guidelines which included the additional provisions required by legislation enacted by the 1993 General Assembly were adopted by the department, board and council prior to July, 1993 and are in effect until June 19, 1994. New guidelines for the department, the Safety and Health

Codes Board and the Apprenticeship Council are being promulgated. Therefore, when the new guidelines are adopted, this regulation will no longer be necessary and is being repealed.

Statutory Authority: §§ 9-6.14:7.1 and 40.1-6 of the Code of Virginia.

Contact: Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 S. 13th Street, Richmond, VA 23219, telephone (804) 371-2631.

LIBRARY BOARD

May 9, 1994 - 10:30 a.m. – Open Meeting
Virginia State Library and Archives, 3rd Floor, Supreme Court Room, 11th Street at Capitol Square, 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 Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Archives and Records Management Committee

May 9, 1994 - 9 a.m. – Open Meeting
Virginia State Library and Archives, Office of the State Archivist, 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.

Automation and Networking Committee

May 9, 1994 - 9:45 a.m. – Open Meeting
Virginia State Library and Archives, 11th Street at Capitol Square, Room 4-24, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to automation and networking as they relate to the Virginia State Library Board.

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.

General Library Committee

May 9, 1994 - 9 a.m. – Open Meeting
Virginia State Library and Archives, Office of the Director of the General Library Division, 11th Street at Capitol Square, Richmond, Virginia. ☐

A meeting to discuss matters pertaining to the General Library Division as they relate to the Virginia State Library Board.

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.

Legislative and Finance Committee

May 9, 1994 - 9:45 a.m. - Open Meeting
Virginia State Library and Archives, Conference Room B, 11th Street at Capitol Square, Richmond, Virginia. ☒

A meeting to discuss matters pertaining to legislative and financial matters as they relate to the Virginia State Library Board.

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

May 9, 1994 - 9 a.m. - Open Meeting
Virginia State Library and Archives, 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, 11th Street at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2320, toll-free 1-800-336-5266 or (804) 786-3618/TDD ☒

COMMISSION ON LOCAL GOVERNMENT

April 6, 1994 - 11 a.m. - Open Meeting
April 7, 1994 - 9 a.m. - Open Meeting
Hillsville area; site to be determined

Oral presentation regarding the town of Hillsville's proposed annexation of 3.4 square miles of territory in Carroll County.

Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices at (804) 786-6508 or (804) 786-1860/TDD ☒

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 805 E. Broad Street, Suite 702, Richmond, VA 23219, telephone (804) 786-6508 or (804) 786-1860/TDD ☒

April 6, 1994 - 7 p.m. - Public Hearing
Hillsville area; site to be determined.

Public hearing regarding the town of Hillsville's

proposed annexation of 3.4 square miles of territory in Carroll County.

Persons desiring to participate in the commission's proceedings and requiring special accommodations or interpreter services should contact the commission's offices (804) 786-6508 or (804) 786-1860/TDD ☒

Contact: Barbara W. Bingham, Administrative Assistant, Commission on Local Government, 805 E. Broad Street, Suite 701, Richmond, VA 23219, telephone (804) 786-6508, or (804) 786-1860/TDD ☒

STATE COUNCIL ON LOCAL DEBT

April 20, 1994 - 11 a.m. - Open Meeting
James Monroe Building, 101 N. 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A regularly scheduled meeting subject to cancellation unless there are action items requiring the council's consideration. Persons interested in attending should call one week prior to the meeting date to ascertain whether or not the meeting is to be held as scheduled.

Contact: Gary Ometer, Debt Manager, Department of the Treasury, P. O. Box 1879, Richmond, VA 23215, telephone (804) 225-4928.

LONGWOOD COLLEGE

Academic Affairs Committee

† **March 24, 1994 - 5 p.m.** - Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒
(Interpreter for the deaf provided upon request)

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Student Affairs Committee

† **April 7, 1994 - 4:30 p.m.** - Open Meeting
Longwood College, Ruffner Building, Farmville, Virginia. ☒
(Interpreter for the deaf provided upon request)

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

Calendar of Events

STATE LOTTERY BOARD

March 21, 1994 - 10 a.m. - Open Meeting
State Lottery Department, 2201 West Broad Street,
Richmond, Virginia. ☒ (Interpreter for the deaf provided
upon request)

A regular monthly meeting of the board. Business will be conducted according to items listed on the agenda which has not yet been determined. Two periods for public comment are scheduled.

Contact: Barbara L. Robertson, Lottery Staff Officer, State Lottery Department, 2201 W. Broad St., Richmond, VA 23220, telephone (804) 367-3106 or (804) 367-3000/TDD ☐

MARINE RESOURCES COMMISSION

March 22, 1994 - 9:30 a.m. - Open Meeting
2600 Washington Avenue, 4th Floor, Room 403, Newport News, Virginia. ☒ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; and policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; and shellfish leasing. Meetings are open to the public. Testimony is taken under oath from parties addressing agenda items on permits and licensing. Public comments are taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Sandra S. Schmidt, Secretary to the Commission, P. O. Box 756, Newport News, VA 23607-0756, telephone (804) 247-8088, toll free 1-800-541-4646 or (804) 247-2292/TDD ☐

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

April 8, 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. Amount, Duration, and Scope of Services; VR 460-02-3.1300. Standards Established and Methods Used to Assure High Quality of Care: Durable Medical Equipment.** The

purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulations, which clarify the requirements and the process for providing durable medical equipment and supplies.

Durable medical equipment, supplies, and appliances are only available under the home health benefit. Services are available as prescribed by the home health regulations at Title 42, Code of Federal Regulations, Part 440, in the recipient's home on a physician's order as part of a written plan of care that is periodically reviewed.

DMAS previously required that a recipient who received durable medical equipment or supplies also receive skilled nursing visits provided by a home health agency. The purposes for making the nursing service a prerequisite for the receipt of medical equipment and supplies were 1) to assess the recipient's needs in the actual environment in which he would be using the items, 2) to determine the quantity of supplies needed to meet his current condition, 3) to assess the patient and/or caregiver's knowledge and appropriate utilization of the items, and 4) to assess the need for other services that may help to further reduce the risks associated with the limitations or conditions imposed by the recipient's current health status. Previously, DMAS never specified those services which will not be covered under home health services program.

In addition, a single skilled nursing follow-up visit was required after the recipient received the prescribed equipment or supplies to determine that it met the recipient's needs, that it was suitable for use in the home, and the recipient or caregiver was knowledgeable and comfortable in using the equipment.

Recently, HCFA has informed the department that it may no longer require nursing visits for the provision of durable medical equipment, supplies, and appliances. Consequently, this amendment allows for the provision of medically necessary supplies, equipment, and appliances for Medicaid recipients who meet home health criteria. Consistent with HCFA's directive that no type of prerequisite condition that predicates the receipt of one home health service on the receipt of another such service may be imposed, DMAS removed the requirement that the recipient who receives medical equipment and supplies also receive skilled nursing visits with an emergency regulation which was effective September 1, 1993.

Because physicians will no longer be required to order equipment and supplies through the home health plan of treatment, DMAS is seeking to replace the currently used plan of treatment with the certificate of medical necessity for those recipients who require durable medical equipment and supplies. The physician will be

required to complete a written certificate of medical necessity (CMN) for all medical equipment and supplies. Therefore, the CMN will serve as the physician's authorization for equipment and supplies in lieu of the home health plan of treatment.

In addition to these changes, the population for which nutritional supplements will be covered is expanded under home health services. Coverage of oral administration does not include the provision of routine infant formulae.

These proposed regulations will supersede emergency regulations issued in June 1993. In FY 92, there were 10,795 total unduplicated recipients who received durable medical equipment and supplies. The total expenditures for durable medical equipment and supplies were \$10,613,116 in FY 92.

The revisions to the durable medical supplies and equipment program are effecting no new reimbursement methodology changes nor are they expected to result in an increase in service utilization. Therefore, there is no fiscal impact attached to either these changes or the incorporation by reference change regarding long-term care provider manuals.

For the changes to the provision of nutritional supplements, it is anticipated that additional FY 94 expenditures will be approximately \$200,000 to cover the cost of covering nutritional supplements for individuals who are able to take the supplement without special intubation. This change in coverage applies only to those individuals receiving nutritional supplements under the home health program. The cost of providing nutritional supplements for nursing facility residents is included in the cost report.

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

Written comments may be submitted through April 8, 1994, to Mary Chiles, 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 St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

* * * * *

March 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 adopt regulations entitled: **VR 460-01-86. Hospital Credit Balance Reporting.** The purpose of this proposal is to promulgate regulations which ensure that hospitals refund Medicaid overpayments in a timely fashion.

Untimely review and refunding of Medicaid overpayments result in Medicaid program funds being unavailable for payment of services.

Title XIX of the Social Security Act, § 1902(a)(25), provides that states take all reasonable measures to ascertain the legal liability of third parties to pay for care and services available to recipients of Medicaid. Medicaid is by law the payor of last resort.

In December 1992, the Office of the Inspector General (IG) of the U.S. Department of Health and Human Services issued a report entitled "Medicaid Accounts Receivables with Credit Balances at Hospitals Participating in the Medicaid Program Administered by the Virginia Department of Medical Assistance Services." As a result of a review of a sample number of hospitals participating in the Virginia Medicaid program, hospitals were determined to be receiving and retaining Medicaid overpayments contrary to federal law and regulations.

Failure to enact this regulation will result in Medicaid overpayments not being refunded to this agency either in a timely manner or at all.

The primary advantage to the public of the adoption of this regulation is that public funds appropriated for the coverage of medical care services for the indigent and poor will be more quickly returned to DMAS for appropriate expenditure.

The primary disadvantage to the hospital providers, which receive Medicaid funds in payment for services rendered, is that they will be required to more diligently monitor their credit balance accounts and more quickly return funds to DMAS. These providers will no longer have the short term use of these public funds. Since these same providers are being required by the Medicare Program to perform the same function, Medicaid's requirements are expected to be minimally additional to Medicare's.

All hospitals, which number approximately 150, will be affected by this proposed regulation. There will be no additional costs to this provider group's operations because reviewing accounts for credit balances is part of routine bookkeeping practice. There will be no additional costs to DMAS to administer this regulation because these funds would have eventually been recovered through the cost settlement or third party liability processes. This regulation will merely speed up the funds recovery process.

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

Written comments may be submitted through March 25, 1994, to Jesse Garland, Director, Fiscal Division, Department of Medical Assistance Services, 600 E. Broad Street, Suite 1300, Richmond, VA 23219.

Calendar of Events

Contact: Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad Street, Richmond, VA 23219, telephone (804) 371-8850.

* * * * *

March 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 460-03-3.1100. Amount, Duration, and Scope of Services; VR 460-02-3.1500. Standards for the Coverage of Organ Transplant Services.** The purpose of the proposed amendments is to expand coverage of transplantation for children, under age 21 only, to liver, heart, and bone marrow (both autologous and allogeneic) transplantation. Coverage of transplantation is continued for cornea and kidney. The proposal is identical to the emergency regulation currently in effect.

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

Written comments may be submitted through March 25, 1994, to Betty Cochran, Department of Medical Assistance Services, 600 E. Broad Street, 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.

Drug Utilization Review Board

March 31, 1994 - 3 p.m. – Open Meeting
Department of Medical Assistance Services, 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 Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

BOARD OF MEDICINE

† **May 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 of Medicine intends to amend regulations entitled: **VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.** The purpose of the proposed amendments is to further specify current statutes pertaining to limited licenses and intern and

resident licenses, provide standardized reference to schools not approved by an accrediting agency recognized by the board, and respecify examination fees for the Podiatric Medical Licensure Examination (PMLEXIS).

Statutory Authority: §§ 54.1-2400, 54.1-2935, 54.1-2936, 54.1-2937, and 54.1-2961 of the Code of Virginia.

Written comments may be submitted until May 23, 1994, to Hilary H. Connor, M.D., Board of Medicine, 6606 West Broad Street, 4th Floor, Richmond, Virginia 23230-1717.

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

Informal Conference Committee

April 7, 1994 - 9 a.m. – Open Meeting
Sheraton Resort and Conference Center, Route 3 and I-95, Fredericksburg, 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, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

Credentials Committee

April 16, 1994 - 8:15 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎

The committee will meet in open and closed session to conduct general business, interview and review medical credentials of applicants applying for licensure in Virginia, and to discuss any other items which may come before the committee. The committee will receive public comments of those persons appearing on behalf of candidates.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197.

Executive Committee

April 15, 1994 - 9 a.m. – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Rooms 2 and 3, Richmond, Virginia. ☎

The committee will meet in open and closed session

to review cases of files requiring administrative action; review legislation enacted by the 1994 General Assembly; review proposed regulations which may need administrative action; adopt amendments for approval of promulgation, specifically VR 465-03-01 and VR 465-06-01, and act upon certain issues as presented. The chairman will entertain public comments on agenda items for 10 minutes following the adoption of the agenda.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Legislative Committee

† **April 22, 1994 - 10 a.m. - Open Meeting**
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

The committee will meet to review VR 465-02-1, § 4.2., Licensure to Practice Acupuncture and amend the definition of practice; review VR 465-06-1, § 3.1. A to amend educational qualifications; develop a position on testing by the National Board of Podiatry for test score; review and respond to new amendments to the Medical Practice Act passed by the General Assembly; discuss patient management by electronics; and discuss such other items that may be presented to the committee. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on any agenda items.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

NOTE: CHANGE IN MEETING DATE
March 25, 1994 - 10 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to review regulations relating to foreign educated therapists, i.e., the TOFLE and TSE exams and to review any other issues which may come before the advisory board. The chairperson will entertain public comments during the first 15 minutes of the meeting.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

April 8, 1994 - 9 a.m. - Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 1, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to review and respond to public comments regarding the regulatory review of VR 465-03-01 to develop or delete those regulations which may present a burden to the licensee or the public. The advisory board will also entertain the issue of Test History Verification and reports.

Contact: Eugenia K. Dorson, Deputy Executive Director, Discipline, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

Advisory Committee on Physician's Assistant

† **April 22, 1994 - 2 p.m. - Open Meeting**
Department of Health Professions, 6606 West Broad Street, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet to (i) review the new amendments to the regulations governing prescribing pharmaceutical agents and the process for inclusion in the protocol; (ii) conduct a review of the definitions of supervision; (iii) review the list of schools which meet the requirements for pharmacology; and (iv) conduct such other business which may come before the committee. The chairman will entertain public comments following the adoption of the agenda for 10 minutes on agenda items.

Contact: Eugenia K. Dorson, Deputy Director, Discipline, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

16TH ANNUAL SYMPOSIUM ON MENTAL HEALTH AND THE LAW

March 31, 1994 - 9 a.m. - Open Meeting
April 1, 1994 - 9 a.m. - Open Meeting
Richmond Hyatt Hotel, Richmond, Virginia. ☎

Symposium on mental health law issues.

Contact: Bettie T. Amiss, Administrator, Institute of Law, Psychiatry and Public Policy, Blue Ridge Hospital, Box 100, Charlottesville, VA 22908, telephone (804) 924-5435.

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

March 23, 1994 - 10 a.m. - Public Hearing

Calendar of Events

James Madison Building, 109 Governor Street, Main Floor Conference Room, Richmond, Virginia. ♯ (Interpreter for the deaf provided upon request)

A public hearing to receive comments on the Virginia Substance Abuse Prevention and Treatment Block Grant application for federal fiscal year 1994. Copies of this application are available for review at the Office of the Director of Planning and Policy, James Madison Building, 8th Floor, Richmond, Virginia, and at each community services board office. Comments may be made at the hearing or in writing by no later than March 23, 1994, to the Office of the Commissioner, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, Virginia. Persons wishing to make a presentation may contact Sterling Deal at (804) 786-3906. Copies of oral statements should be filed at the time of the hearing.

Contact: Sterling Deal, SA Planner, Box 1797, Richmond, Virginia, telephone (804) 786-3906 or (804) 371-8977/TDD

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

March 23, 1994 - 10 a.m. - Open Meeting
Middle Peninsula-Northern Neck Community Services Board, Saluda, Virginia. ♯

A regular monthly meeting. Agenda to be published on March 16, 1994. 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, State Mental Health, Mental Retardation and Substance Abuse Services Board, P. O. Box 1797, Richmond, VA 23214, telephone (804) 786-3921.

VIRGINIA MENTAL HEALTH PLANNING COUNCIL

March 30, 1994 - 10 a.m. - Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia. ♯ (Interpreter for the deaf provided upon request)

The council meets at least four times per year. Its mission is to advocate for a consumer and family oriented, integrated and community-based system of mental health care of the highest quality. The council continuously monitors and evaluates the implementation of the state's mental health plan.

Contact: Jeanette DuVal, Policy Analyst, Department of Mental Health, Mental Retardation and Substance Abuse Services, P. O. Box 1797, Richmond, VA 23214, telephone (804) 371-0359 or (804) 371-8977/TDD

DEPARTMENT OF MINES, MINERALS AND ENERGY

Board of Examiners

April 5, 1994 - 1 p.m. - Public Hearing
Division of Mines, U.S. Route 23 South, Big Stone Gap, Virginia.

April 5, 1994 - 1 p.m. - Public Hearing
Division of Administration, 9th Street Office Building, 202 North 9th Street, 8th Floor, Richmond, Virginia.

May 6, 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's Board of Examiners intends to adopt regulations entitled: **VR 480-04-2. Board of Examiners Certification Regulations.** The purpose of the proposed regulation is to set forth requirements for certification of persons performing specialized tasks in mining.

Statutory Authority: § 45.1-12 of the Code of Virginia.

Contact: Harry Childress, Chief, Division of Mines, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (703) 523-8100.

DEPARTMENT OF MOTOR VEHICLES

April 22, 1994 - 9 a.m. - Public Hearing
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia.

April 22, 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 Motor Vehicles intends to amend regulations entitled: **VR 485-10-9101. Public Participation Guidelines for Regulation, Development and Promulgation.** The proposed amendments revise the existing regulations in accordance with the legislative changes made to the Administrative Process Act in 1993.

Statutory Authority: §§ 9-6.14:7.1 and 46.2-203 of the Code of Virginia.

Contact: Marc Copeland, Legislative Analyst, Department of Motor Vehicles, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-1875.

April 11, 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 Motor Vehicles intends to adopt regulations entitled: **VR 485-50-9302. Regulations Governing Requirements for Proof of Residency to Obtain a Virginia Driver's License or Photo Identification Card.** The regulation establishes the process and the documentation that will be required by the Department of Motor Vehicles for proof of residency in Virginia.

Statutory Authority: §§ 46.2-203, 46.2-323, 46.2-345, and 46.2-348 of the Code of Virginia.

Written comments may be submitted until April 11, 1994, to Simon J. Stapleton, Department of Motor Vehicles, Room 319, P. O. Box 27412, Richmond, VA 23269-0001.

Contact: Clarence H. Bradbury, Policy Analyst, Department of Motor Vehicles, Room 314, P. O. Box 27412, Richmond, VA 23269-0001, telephone (804) 367-0408.

STATE NETWORKING USERS ADVISORY BOARD

March 28, 1994 - 1 p.m. – Open Meeting
Piedmont Virginia Community College, Seminar Room 260, Route 6, Charlottesville, Virginia. ☒

A meeting to discuss administrative matters of the board.

Contact: Judith Lowry, Secretary, Virginia State Library and Archives, 11th St. at Capitol Square, Richmond, VA 23219-3491, telephone (804) 786-2321, toll-free 1-800-336-5266 or (804) 786-3618/TDD ☒

BOARD OF NURSING

March 22, 1994 - 8:30 a.m. – Open Meeting
March 23, 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 forum session beginning at 11 a.m. on Tuesday, March 22, 1994. At 3 p.m. on March 22, 1994, the board will consider proposed amendments to regulations related to changes in the administration of licensing examinations and to those regulations related to

education program approval to ensure compliance with changes in the Administrative Process Act.

Contact: Corinne F. Dorsey, R.N., Executive Director, Department of Health Professions, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☒

March 24, 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 panel of the Board of Nursing will conduct formal hearings. If the agenda is not filled with formal hearings, two special conference committees will conduct informal conferences as time permits. Public comment will not be received.

Contact: Corinne 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 ☒

† **May 20, 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 intends to adopt regulations entitled: **VR 495-04-1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3005 of the Code of Virginia.

Contact: Corinne F. Dorsey, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909.

Special Conference Committee

March 21, 1994 - 9 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 meeting to conduct informal conferences in the morning. A panel of the Board of Nursing will conduct formal hearings in the afternoon. Public comment will not be received.

Contact: Corinne 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 ☒

Calendar of Events

† **March 29, 1994 - 9 a.m.** – Open Meeting
Sheraton Fredericksburg, I-95 and Virginia Route 3, Board Room, Fredericksburg, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to conduct informal conferences with nurse aides to determine what, if any, action should be recommended to the Board of Nursing. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., M.S.N., Assistant Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

March 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 Nursing Home Administrators intends to amend regulations entitled: **VR 500-01-2:1. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed amendments is to revise continuing education requirements of the board, to establish as permanent fee increases in emergency regulations, and to delete public participation guidelines.

Statutory Authority: §§ 54.1-2400 and 54.1-3100 of the Code of Virginia.

Contact: Meredyth P. Partridge, Executive Director, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111.

† **April 27, 1994 - 9:30 a.m.** – Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☒

A regularly scheduled meeting.

Contact: Meredyth P. Partridge, Executive Director, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9907 or (804) 662-7197/TDD ☎

BOARD FOR OPTICIANS

April 15, 1994 - 9 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to conduct regular board business and any other matters which may require board action.

Contact: Geralde W. Morgan, Senior Administrator,

Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF OPTOMETRY

April 22, 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 Optometry intends to adopt regulations entitled: **VR 510-01-2. Public Participation Guidelines.** These regulations will replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3200 et seq. of the Code of Virginia.

Written comments may be submitted through April 22, 1994, to Carol Stamey, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230-1717.

Contact: Elizabeth A. Carter, Executive Director, Board of Optometry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9910.

VIRGINIA POLLUTION PREVENTION ADVISORY COMMITTEE

† **March 25, 1994 - 1 p.m.** – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☒

A meeting to discuss the committee's mission and goals. The advisory committee has been established to assist the Department of Environmental Quality in its implementation of voluntary pollution prevention technical assistance throughout the Commonwealth.

Contact: Sharon K. Baxter, Pollution Prevention Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4344 or (804) 762-4021/TDD ☎

POLYGRAPH EXAMINERS ADVISORY BOARD

March 22, 1994 - 10 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A meeting to administer the polygraph examiners licensing examination to eligible polygraph examiner interns and to consider other matters which may require board action.

Contact: Geralde W. Morgan, Senior Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF PROFESSIONAL COUNSELORS

April 11, 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 **repeal** regulations entitled: **VR 560-01-01. Public Participation Guidelines** and **adopt** regulations entitled: **VR 560-01-01:1. Public Participation Guidelines**. These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

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

Contact: Evelyn B. Brown, Board of Professional Counselors, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9912.

BOARD OF PSYCHOLOGY

April 11, 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 Psychology intends to **repeal** regulations entitled: **VR 565-01-1. Public Participation Guidelines** and **adopt** regulations entitled: **VR 565-01-1:1. Public Participation Guidelines**. These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

Statutory Authority: §§ 9-6.14:7.1, 54.1-2400 and 54.1-3600 of the Code of Virginia.

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

RAPPAHANNOCK-RAPIDAN DIVISION OF COURT SERVICES EXECUTIVE BOARD

March 21, 1994 - 5:30 p.m. – Open Meeting
1300 Sunset Lane, Suite 3110, Culpeper, Virginia.

A quarterly business meeting of the District Nine Virginia Alcohol Safety Action Program. Items for review include 94-95 budget proposal, program deficit,

program activities, personnel and new legislation.

Contact: R. Dean Irvine, Director, 1300 Sunset Lane, Suite 3110, Culpeper, VA 22701, telephone (703) 829-7379.

STATE REHABILITATION ADVISORY COUNCIL

† **March 25, 1994 - 9:30 a.m.** – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia. ❖ (Interpreter for the deaf provided upon request)

The initial meeting of the advisory council.

Contact: Susan L. Urofsky, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019 TDD and voice or (804) 662-9040/TDD ❖

BOARD OF REHABILITATIVE SERVICES

† **March 28, 1994 - 10 a.m.** – Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A regular monthly business meeting of the board.

Contact: Susan L. Urofsky, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019 TDD and voice or (804) 662-9040/TDD ❖

VIRGINIA RESOURCES AUTHORITY

April 12, 1994 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of March 8, 1994; (ii) review the authority's operations for the prior months; and (iii) 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., Virginia Resources Authority, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

May 10, 1994 - 9:30 a.m. – Open Meeting
The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

A meeting to (i) approve minutes of the meeting of April 12, 1994; (ii) review the authority's operations for the prior months; and (iii) consider other matters

Calendar of Events

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., Virginia Resources Authority, 909 East Main Street, Suite 707, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

SEWAGE HANDLING AND DISPOSAL ADVISORY COMMITTEE

† **April 21, 1994 - 10 a.m.** – Open Meeting
Main Street Station, 1500 East Main Street, Suite 115, Richmond, Virginia.

A regular meeting.

Contact: Hazel L.J. Sanon, Secretary, 1500 E. Main St., Main St. Station, Suite 115, Richmond, VA 23219, telephone (804) 786-1750.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

NOTE: EXTENSION OF WRITTEN COMMENT PERIOD
April 6, 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 615-43-4. Adoptee Application for Disclosure of Identifying Information on Birth Family in a Closed Adoption Record.** This regulation establishes policy relative to the search and disclosure process when an adult adopted in Virginia applies to the Virginia Department of Social Services to obtain identifying information on his birth family pursuant to § 63.1-236 of the Code of Virginia. The State Board of Social Services will consider public comments at its regularly scheduled meeting.

Statutory Authority: §§ 63.1-25, 63.1-236, and 63.1-236.1 of the Code of Virginia.

Written comments may be submitted until April 6, 1994, to Sandra Sanroma, Department of Social Services, 2nd Floor, 730 E. Broad Street, Richmond, VA 23219-1849.

Contact: Margaret J. Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad Street, 8th Floor, Richmond, VA 23219-1849, telephone (804) 692-1821.

April 22, 1994 - 10 a.m. – Public Hearing
Department of Social Services, 730 East Broad Street, 7th

Floor Conference Room, Richmond, Virginia.

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 amend regulations entitled: **VR 615-08-1. Virginia Energy Assistance Program.** The amendments propose several changes to the Energy Assistance Program. In fuel assistance, households receiving utility subsidies who must pay some heating expenses out-of-pocket will have their benefits reduced by the amount of the subsidy. Assistance to provide primary fuel and to purchase space heaters for temporary use will no longer be provided through crisis assistance. The cooling assistance component would be eliminated.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted until May 6, 1994, to Charlene H. Chapman, Program Manager, Energy and Emergency Assistance, 730 East Broad Street, 7th Floor, Richmond, Virginia.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF) AND CHILD DAY-CARE COUNCIL

† **April 4, 1994 - 1 p.m.** – Public Hearing
Central Regional Office Conference Room, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia.

May 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 Board of Social Services and Child Day-Care Council intend to amend regulations entitled: **VR 615-30-01 and VR 175-03-01. General Procedures and Information for Licensure.** The purpose of the proposed amendments is to incorporate new legislation and to simplify and clarify licensing procedures.

Statutory Authority: §§ 63.1-174 and 63.1-202 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

† **April 4, 1994 - 1 p.m.** – Public Hearing

Central Regional Office Conference Room, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia.

May 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 Board of Social Services and Child Day-Care Council intend to adopt regulations entitled: **VR 615-38-01 and VR 175-11-01. Standards and Regulations for Licensed Child Day Center Systems.** The purpose of this regulation is to set forth standards and procedures that licensees and Department of Social Services staff must follow in the administration of child day center systems.

Statutory Authority: § 63.1-196.01:1 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenberg, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

April 12, 1994 - 10 a.m. – CANCELLED
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

This general business meeting has been cancelled.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

† **March 23, 1994 - 10 a.m. – Open Meeting**
411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia. ☒

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648 or toll-free 1-800-792-5626.

DEPARTMENT OF TRANSPORTATION

† **March 29, 1994 - 10 a.m. – Public Hearing**
Suffolk District Office, 1700 North Main Street, Route 460, Suffolk, Virginia. ☒ (Interpreter for the deaf provided

upon request)

Suffolk district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **March 30, 1994 - 10 a.m. – Public Hearing**
Culpeper District Office, Route 15 (0.5 mile south of Route 3), Culpeper, Virginia. ☒ (Interpreter for the deaf provided upon request)

Culpeper district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **March 31, 1994 - 10 a.m. – Public Hearing**
Augusta County Government Center, Route 11, Verona, Virginia. ☒ (Interpreter for the deaf provided upon request)

Staunton district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 4, 1994 - 10 a.m. – Public Hearing**
Lynchburg District Office, Route 501 (0.26 mile south of intersection at Route 460 and 501), Lynchburg, Virginia. ☒ (Interpreter for the deaf provided upon request)

Lynchburg district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

Central Regional Office Conference Room, Wythe Building, 1604 Santa Rosa Road, Richmond, Virginia.

May 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 Board of Social Services and Child Day-Care Council intend to adopt regulations entitled: **VR 615-38-01 and VR 175-11-01. Standards and Regulations for Licensed Child Day Center Systems.** The purpose of this regulation is to set forth standards and procedures that licensees and Department of Social Services staff must follow in the administration of child day center systems.

Statutory Authority: § 63.1-196.01:1 of the Code of Virginia.

Written comments may be submitted until May 21, 1994, to Kathryn Thomas, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219.

Contact: Peggy Friedenber, Legislative Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS

April 12, 1994 - 10 a.m. - CANCELLED
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 3, Richmond, Virginia. ☒

This general business meeting has been cancelled.

Contact: David Dick, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad Street, Richmond, VA 23230, telephone (804) 367-8595 or (804) 367-9753/TDD ☎

VIRGINIA STUDENT ASSISTANCE AUTHORITIES

† **March 23, 1994 - 10 a.m. - Open Meeting**
411 East Franklin Street, 2nd Floor Board Room, Richmond, Virginia. ☒

A general business meeting.

Contact: Catherine E. Fields, Administrative Assistant, One Franklin Square, 411 E. Franklin St., Suite 300, Richmond, VA 23219, telephone (804) 775-4648 or toll-free 1-800-792-5626.

DEPARTMENT OF TRANSPORTATION

† **March 29, 1994 - 10 a.m. - Public Hearing**
Suffolk District Office, 1700 North Main Street, Route 460, Suffolk, Virginia. ☒ (Interpreter for the deaf provided

upon request)

Suffolk district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **March 30, 1994 - 10 a.m. - Public Hearing**
Culpeper District Office, Route 15 (0.5 mile south of Route 3), Culpeper, Virginia. ☒ (Interpreter for the deaf provided upon request)

Culpeper district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **March 31, 1994 - 10 a.m. - Public Hearing**
Augusta County Government Center, Route 11, Verona, Virginia. ☒ (Interpreter for the deaf provided upon request)

Staunton district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 4, 1994 - 10 a.m. - Public Hearing**
Lynchburg District Office, Route 501 (0.26 mile south of intersection at Route 460 and 501), Lynchburg, Virginia. ☒ (Interpreter for the deaf provided upon request)

Lynchburg district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

Calendar of Events

† **April 6, 1994 - 10 a.m.** – Public Hearing
Richmond District Office, Pine Forest Drive off Route 1 (1 mile north of Colonial Heights), Colonial Heights, Virginia. ☒ (Interpreter for the deaf provided upon request)

Richmond district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 13, 1994 - 9 a.m.** – Public Hearing
Salem District Office, Harrison Avenue (north of Main Street and east of VA 311), Salem, Virginia. ☒ (Interpreter for the deaf provided upon request)

Salem district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 15, 1994 - 10 a.m.** – Public Hearing
Virginia Highlands Community College, Route 372 (0.5 mile north of I-81 at Exit 7), Abingdon, Virginia. ☒ (Interpreter for the deaf provided upon request)

Bristol district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 19, 1994 - 10 a.m.** – Public Hearing
Tappahannock/Essex Fire Department, Route 627 (0.4 mile west of Route 17), Tappahannock, Virginia. ☒ (Interpreter for the deaf provided upon request)

Fredericksburg district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation,

1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **April 22, 1994 - 10 a.m.** – Public Hearing
Fairfax City Hall, Fairfax, Virginia. ☒ (Interpreter for the deaf provided upon request)

Northern Virginia district preallocation hearing. A public hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **June 9, 1994 - 2 p.m.** – Public Hearing
Department of Transportation, 1221 East Broad Street, Auditorium, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the eastern districts. Final hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit for the Richmond, Fredericksburg, Suffolk, Culpeper and Northern Virginia districts.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

† **June 9, 1994 - 9 a.m.** – Public Hearing
Salem District Office, Harrison Avenue, Salem, Virginia. ☒ (Interpreter for the deaf provided upon request)

Final allocation hearing for the western districts. Final hearing to receive comments on highway allocations for the upcoming year, and on updating the Six-Year Improvement Program for the interstate, primary, and urban systems, as well as mass transit for Bristol, Salem, Lynchburg and Staunton districts.

Contact: Claude D. Garver, Jr., Assistant Commissioner of Programming and Planning, Department of Transportation, 1401 E. Broad St., Richmond, VA 23219, telephone (804) 786-1476 or (804) 786-4410/TDD ☎

DEPARTMENT OF THE TREASURY (TREASURY BOARD)

April 20, 1994 - 9 a.m. – Open Meeting
James Monroe Building, 101 N. 14th St., 3rd Floor Board Room, Richmond, Virginia.

A regular meeting of the board.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, 101 N. 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

BOARD OF VETERINARY MEDICINE

April 8, 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 Veterinary Medicine intends to adopt regulations entitled: **VR 645-01-0.1. Public Participation Guidelines.** These regulations replace emergency regulations currently in effect which provide guidelines for the involvement of the public in the promulgation of regulations for the board.

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

Written comments may be submitted through April 8, 1994, to Terri Behr, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717.

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

VIRGINIA RACING COMMISSION

† **April 13, 1994 - 9:30 a.m.** - Open Meeting
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. ☐

A regular commission meeting will be held and presentations will be made by various breeding associations concerning the state of the horse breeding industry in the Commonwealth 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

April 30, 1994 - 10 a.m. - Open Meeting
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ☐

A quarterly meeting to advise the Virginia Board for the Visually Handicapped on matters related to services for blind and visually impaired citizens of the Commonwealth. A portion of this meeting will be conducted jointly with the Board for the Visually Handicapped.

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 COUNCIL ON VOCATIONAL EDUCATION

† **March 23, 1994 - 1 p.m.** - Open Meeting
The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia.

A business session.

Contact: Jerry M. Hicks, Executive Director, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

† **March 24, 1994 - 9:30 a.m.** - Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia.

A joint meeting with the Virginia Board of Education.

Contact: Jerry M. Hicks, Executive Director, 7420-A Whitepine Rd., Richmond, VA 23237, telephone (804) 275-6218.

VIRGINIA VOLUNTARY FORMULARY BOARD

March 31, 1994 - 10:30 a.m. - Open Meeting
1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.

A meeting to consider public hearing comments and review new product data for products pertaining to the Virginia Voluntary Formulary.

Contact: James K. Thomson, Director, Bureau of Pharmacy Services, 109 Governor Street, Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

VIRGINIA WASTE MANAGEMENT BOARD

March 23, 1994 - 10 a.m. - Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☐

A regular meeting.

Contact: Doneva A. Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 10009, 629 E. Main St., Richmond, VA 23240, telephone (804) 762-4379.

STATE WATER CONTROL BOARD

March 22, 1994 - 7 p.m. - Public Hearing
Charlottesville City Council Chambers, City Hall, 7th and Downtown Mall, Charlottesville, Virginia.

Calendar of Events

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 680-21-00. Water Quality Standards (VR 680-21-01.3. Antidegradation Policy)**. The purpose of these amendments is to amend the antidegradation policy by designating five surface waters for special protection as exceptional waters. Applicable federal requirements: The EPA Water Quality Standards Regulation. (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish the exceptional waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the selection and designation of specific water bodies as exceptional waters. Locality particularly affected: While this proposal affects specific localities (Albemarle, Botetourt, Carroll and Washington Counties), the board does not believe any locality to be adversely affected. In addition, local governmental entities have not voiced any concerns about the discharge restrictions that would be imposed by the designations of these five waters. Informal question and answer period: An informal question and answer period will be held one-half hour before each public hearing. Accessibility to persons with disabilities: 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 at the address below, or by telephone at (804) 762-4379 or TDD (804) 762-4021. Persons needing interpreter services for the deaf must notify Ms. Dalton no later than Monday, February 28, 1994. Opportunity for formal hearing: The board will hold a formal (evidential) hearing at a time and place to be established if a petition for such a hearing is received and granted. Affected persons may petition for a formal hearing concerning any issue of fact directly relevant to the legal validity of the proposed action. Petitions must meet the requirements of § 1.23 (b) of the board's Procedural Rule No. 1 (1980), and must be received by the contact person designated below by 4 p.m. on Monday, March 7, 1994. Request for comments: The board is seeking written comments from interested persons on the proposed regulation and on the costs and benefits of the proposal. Written comments should be directed to Ms. Doneva Dalton at the address below by 4 p.m. on Monday, April 11, 1994. Other information: 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 the contact person listed below.

Statutory Authority: § 62.1-44.15 (3a) of the Code of Virginia.

Written comments may be submitted until April 11, 1994, to Doneva Dalton, Hearing Reporter, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240.

Contact: Jean Gregory, Department of Environmental Quality, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

March 21, 1994 - 9 a.m. – Open Meeting
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia. ☒

A regular meeting.

Contact: Doneva A. Dalton, Hearings Reporter, Department of Environmental Quality, P.O. Box 10009, 629 E. Main St., Richmond, VA 23240, telephone (804) 762-4379.

March 23, 1994 - 7 p.m. – Open Meeting
Department of Environmental Quality, Board Room, 4900 Cox Road, Innsbrook Corporate Center, Glen Allen, Virginia. ☒ (Interpreter for the deaf provided upon request)

March 24, 1994 - 7 p.m. – Open Meeting
Roanoke County Board of Supervisors Room, First Floor, 5204 Bernard Drive, Roanoke, Virginia ☒ (Interpreter for the deaf provided upon request)

A public meeting to receive oral and written comments on the proposed amendment to the Antidegradation Policy of the Water Quality Standards Regulation (VR 680-21-01) to increase the participation of local governments in the nomination and designation process for exceptional waters. The State Water Control Board intends to consider amending the regulation to offer local governments the opportunity to determine if a proposed exceptional waters nomination is consistent with local comprehensive planning as part of the process.

Contact: Jean Gregory, Department of Environmental Quality, Water Division, P. O. Box 11143, Richmond, VA 23230, telephone (804) 527-5093.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

March 29, 1994 - 8:30 a.m. – Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

An open meeting to conduct regulatory review and other board business which may require board action.

Contact: Geralde W. Morgan, Board Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8534.

BOARD OF YOUTH AND FAMILY SERVICES

† **April 14, 1994 - 8:30 a.m. – Open Meeting**

Roanoke, Virginia. ☐

A committee meeting from 8:30 to 10 a.m.; general meeting from 10 a.m. to 5 p.m. Meetings to certify programs regulated by the board and to approve policies governing the operation of the Department of Youth and Family Services. For location and more information contact Donald Carignan.

Contact: Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

LEGISLATIVE

COMMISSION ON POPULATION GROWTH AND DEVELOPMENT

April 13, 1994 - 10 a.m. - Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A meeting to review the 1994 General Assembly session and discuss the commission's work program for its final year.

Contact: Katherine L. Imhoff, Executive Director, Commission on Population Growth and Development, General Assembly Bldg., 910 Capitol St., Room 519B, Richmond, VA 23219, telephone (804) 371-4949.

CHRONOLOGICAL LIST

OPEN MEETINGS

March 21

Alcoholic Beverage Control Board
† Emergency Planning Committee, Local - Prince William County, Manassas City and Manassas Park City
Governor's Job Training Coordinating Council
Lottery Board, State
Nursing, Board of
- Special Conference Committee
Rappahannock-Rapidan Division of Court Services Executive Board
Water Control Board, State

March 22

† Agriculture and Consumer Services, Department of
- Virginia Farmers' Market Board
Marine Resources Commission
Nursing, Board of

Polygraph Examiners Advisory Board

March 23

Agriculture and Consumer Services, Department of
- Virginia Peanut Board
Chesapeake Bay Local Assistance Board
- Southern Area Review Committee
Contractors, Board for
- Recovery Fund Committee
Environmental Quality, Department of
George Mason University
- Board of Visitors
Mental Health, Mental Retardation and Substance Abuse Services Board, State
Nursing, Board of

† Student Assistance Authorities, Virginia
- Board of Directors
† Vocational Education, Virginia Council on Waste Management Board, Virginia
Water Control Board, State

March 24

† Disability Services Council
Environmental Quality, Department of
† Longwood College
- Academic Affairs Committee
Nursing, Board of
† Vocational Education, Virginia Council on

March 25

Accountancy, Board for
- Continuing Professional Education Committee
† Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for
- Board for Interior Designers
Medicine, Board of
- Advisory Board on Occupational Therapy
† Pollution Prevention Advisory Committee, Virginia
† Rehabilitation Advisory Council, State

March 28

Agricultural Council, Virginia
Networking Users Advisory Board, State
† Rehabilitative Services, Board of

March 29

Agricultural Council, Virginia
† Nursing, Board of
Waterworks and Wastewater Works Operators, Board for

March 30

† Contractors, Board for
† Health Professions, Department of
- Executive/Legislation Committee
- Practitioner Self-Referral Committee
Mental Health Planning Council, Virginia

March 31

Medical Assistance Services, Department of

Calendar of Events

- Drug Utilization Review Board
 - Mental Health and the Law, 16th Annual Symposium on
 - † Statewide Independent Living Council
 - Voluntary Formulary Board, Virginia
- April 1**
Mental Health and the Law, 16th Annual Symposium on
- April 4**
Alcoholic Beverage Control Board
† Barbers, Board for
- April 5**
Accountancy, Board for
- Regulatory Review Committee
Hopewell Industrial Safety Council
- April 6**
† Emergency Planning Committee, Local - Winchester
Local Government, Commission on
- April 7**
† Dentistry, Board of
Emergency Planning Committee, Local - Chesterfield
County
Local Government, Commission on
† Longwood College
- Student Affairs Committee
Medicine, Board on
- Informal Conference Committee
- April 8**
† Conservation and Recreation, Department of
- Catoctin Creek Scenic River Advisory Board
† Dentistry, Board of
Medicine, Board of
- Advisory Board on Physical Therapy
- April 12**
Higher Education, State Council of
Professional Soil Scientists, Board for
Virginia Resources Authority
- April 13**
Population Growth and Development, Commission on
† Virginia Racing Commission
- April 14**
Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Dentistry, Board of
† Fire Services Board, Virginia
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
† Youth and Family Services, Board of
- April 15**
Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Dentistry, Board of
† Fire Services Board, Virginia
Medicine, Board of
- Executive Committee
Opticians, Board for
- April 16**
† Dentistry, Board of
Medicine, Board of
- Credentials Committee
- April 18**
Alcoholic Beverage Control Board
- April 19**
† Agriculture and Consumer Services, Department of
- Virginia Winegrowers Advisory Board
- April 20**
Emergency Planning Committee, Local - Henrico
Local Debt, State Council on
Treasury Board
- April 21**
† Sewage Handling and Disposal Advisory Committee
- April 22**
† Medicine, Board of
- Legislative Committee
- Advisory Committee on Physician's Assistants
- April 25**
† Accountancy, Board for
† Health, Department of
- Division of Shellfish Sanitation
- April 26**
† Accountancy, Board for
- April 27**
† Nursing Home Administrators, Board of
- April 30**
Visually Handicapped, Department for the
- Advisory Committee on Services
- May 4**
Environmental Quality, Department of
- Work Group on Detection/Quantitation Levels
† Geology, Board for
- May 5**
Emergency Planning Committee, Local - Chesterfield
County
- May 9**
Library Board, Virginia State
- Archives and Records Management Committee
- Automation and Networking Committee
- General Library Committee

Calendar of Events

- Legislative and Finance Committee
- Public Library Development Committee

May 10

Higher Education, State Council of
Virginia Resources Authority

May 12

† Health, Department of
- Division of Shellfish Sanitation

May 16

† Health, Department of
- Division of Shellfish Sanitation

June 14

Higher Education, State Council of

PUBLIC HEARINGS

March 22

Water Control Board, State

March 23

Mental Health, Mental Retardation and Substance
Abuse Services, Department of

March 24

Branch Pilots, Board for

March 29

† Transportation, Department of

March 30

Health, Department of
† Transportation, Department of

March 31

† Transportation, Department of

April 4

Labor and Industry, Department of
† Social Services and Child Day-Care Council,
Department of
† Transportation, Department of

April 5

† Education, Department of
Mines, Minerals and Energy, Department of

April 6

Criminal Justice Services, Department of
Local Government, Commission on
† Transportation, Department of

April 12

† Deaf and Hard-of-Hearing, Department of

April 13

† Corrections, Department of
† Transportation, Department of

April 14

Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Fire Services Board, Virginia

April 15

† Transportation, Department of

April 19

† Transportation, Department of

April 22

Motor Vehicles, Department of
Social Services, Department of
† Transportation, Department of

April 25

† Education, State Board of
Health, Department of

April 27

Health, Department of

April 28

Health, Department of

April 29

Health, Department of

June 9

† Transportation, Department of

Calendar of Events
