

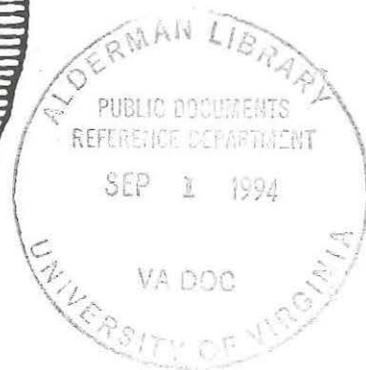
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# THE VIRGINIA REGISTER

OF REGULATIONS

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August 22, 1994

# 1994

Pages 5787 Through 5968

## VIRGINIA REGISTER

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

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

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

### ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

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

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

### EMERGENCY REGULATIONS

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

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

### STATEMENT

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

### CITATION TO THE VIRGINIA REGISTER

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# NOTICES OF INTENDED REGULATORY ACTION

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<b>Symbol Key †</b>
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† Indicates entries since last publication of the Virginia Register
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**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 promulgating regulations entitled: **VR 460-01-11 and VR 460-02-2.1100. Definition of Medicaid State Plan Health Maintenance Organizations (HMOs)**. The purpose of the proposed regulations is to promulgate permanent regulations to replace emergency regulations enabling the Department of Medical Assistance Services to implement HMO contracting as mandated by the 1994 General Assembly. This agency does not intend to hold public hearings regarding this regulatory action.

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

Written comments may be submitted until September 21, 1994, to Tom McGraw, 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) 786-7933.

V.A.R. Doc. No. R94-1167; Filed August 2, 1994, 11:44 a.m.

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# PROPOSED REGULATIONS

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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.

### CHILD DAY-CARE COUNCIL

**Title of Regulation:** VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.

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

**Public Hearing Dates:**

October 11, 1994 - 4 p.m. (Wytheville)  
October 13, 1994 - 3 p.m. (Verona)  
October 17, 1994 - 4 p.m. (Fredericksburg)  
October 19, 1994 - 4 p.m. (Norfolk)  
Written comments may be submitted until October 22, 1994.  
(See Calendar of Events section for additional information)

**Basis:** Section 63.1-202 of the Code of Virginia provides the statutory basis for the Child Day-Care Council to promulgate regulations for child day centers.

**Purpose:** The purpose of the proposed regulation is to provide protective oversight of children preschool age and younger in child day centers including therapeutic child development programs and special needs child day programs. More specifically the purpose is to ensure that the activities, services, and facilities of the centers and therapeutic child development programs and special needs child day programs are conducive to the well-being of these children and that the risks in the environment of the centers are reduced for these children. The new requirements for therapeutic child development programs and special needs child day programs help assure the needs of children with disabilities are met while at the center.

**Substance and Impact:** This regulation describes the requirements that child day centers serving children of preschool age and younger must meet to become licensed by the Department of Social Services. The 1993 General Assembly session enacted Senate Bill 777 and House Bill 2380, which require the Child Day-Care Council to promulgate therapeutic recreation standards by July 1, 1995. The proposed child day center regulations include standards for these programs.

As of June 30, 1994, there were 1,531 child day centers licensed by the Department of Social Services. They have a licensed capacity for 125,232 children ranging from birth to 18 years of age. Centers serving children of preschool age and younger and the children of preschool age and younger enrolled in the centers, therapeutic child

development programs and special needs child day programs will be affected by this regulation.

It is not known how many therapeutic child development programs and special needs child day programs will become subject to licensure. Our best estimate is that fewer than 25 will be subject but it is unknown how many provide care to children of preschool age and younger. No specific localities will be particularly affected by the proposed regulation. The numbers of therapeutic child development programs are dictated by population density. Representatives from the Virginia Recreation and Park Society have indicated that the new requirements for therapeutic child development programs and special needs child day programs are already standard operating procedures and any cost for the provider should be minimal.

The council received information on the implementation of the child day center regulations which became effective November 1, 1993, and made decisions about the standards accordingly. The changes to the existing standards are predominantly for clarity which should have minimal impact. The impact from the addition of standards for therapeutic child development programs and special needs child day programs will be minimal since these requirements are already standard operating procedures. Changes that may have an impact include the following:

1. § 2.29, Tuberculosis examination for staff, is being revised to require a tuberculosis test every two years instead of just when hired. This change is based on the increased incidence of tuberculosis in the last few years. This will increase cost but most local health departments will do this testing for a minimal charge (usually \$5.00). When considering the high turnover rate of employees in the child care industry (employees leaving before two years have elapsed) this may have little effect on overall cost.
2. § 3.6, Administrators qualifications, reduces the qualifications of administrators who also perform program director responsibilities. This will reduce the cost for owners and make it easier to hire administrators. It will also make it easier for owners of businesses to open centers. This revision lessens the impact of the regulation.
3. § 5.3, Tuberculosis tests for contract staff, requires contract staff who work directly with children to meet applicable requirements including tuberculosis tests.
4. § 7.21 was added to require at least one staff member and also one person on all field trips or

wherever children are in care to be trained in age appropriate cardiopulmonary resuscitation (CPR). Although prices of CPR courses vary across the state, a typical infant and child CPR course offered by the American Red Cross costs \$30 and takes five hours to complete. Sometimes the CPR training is included with a first aid course such as Community First Aid and Safety that costs \$38 (first aid training is already required by § 7.19). Certification in CPR needs to be updated yearly.

It is also possible for a staff member proficient in first aid to become an American Red Cross first aid and CPR instructor which costs \$42 and takes 22 hours to complete. This instructor certification allows the person to train others at the center for a reduced cost (i.e., \$16 instead of \$30 for an infant and child CPR course). Currently a grant is available to pay for this instructor training. Also, the American Red Cross will reimburse a person for the training if he teaches two volunteer community courses through its office within one year.

5. § 8.6, Food from home, now allows lunches to be brought from home for preschool children. The impact will be to families using licensed centers. This may reduce the cost for some providers who choose to stop serving lunches but it will also transfer the responsibility from the provider to the parents to provide the daily meals/snacks for the child at the center.

The regulations, which are required by law, should have a minimal cost impact for the department beyond printing and distributing the new regulations to licensees and interested persons.

The funding sources for programs to implement the standards will vary. These sources may include:

- Parent fees
- Private donations
- USDA reimbursements
- Payment for all or a portion of child care tuition by local departments of social services through AFDC Day Care, JOBS Day Care, Transitional Day Care, FSET, Fee System At-Risk and Fee System/Block Grant day care
- Grants from the Dependent Care Planning and Development 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 state and local level

Small businesses that serve children of preschool age and younger and meet the definition of a child day center already must comply with the regulation. Changes made to the existing standards are predominantly clarity changes which should have a minimal impact. Regulation of child day centers will help assure parents safe choices for child care so they can work for small businesses. There will most likely be no impact by the new therapeutic child development and special needs child day standards due to the fact that all known programs that will be subject are operated by county or local governments or nonprofit organizations.

Issues: This document is comprised of the following issues which impact child day centers serving children of preschool age and younger that are subject to licensure by the Department of Social Services: administration, personnel, physical plant, staffing and supervision, program, special care provisions and emergencies, special services and the Montessori Module.

The advantage of continuing implementation of this regulation is that it protects children in care at child day centers. This also helps assure parents safe choices for child care so they can work. The special requirements for therapeutic child development programs and special needs child day programs help assure the needs of children with disabilities are met while at the center.

The advantage of this regulation for the Department of Social Services is that it allows the department to comply with statutory intent. The disadvantage of this regulation is that centers may need to spend money to meet the requirements although, with this revision, representatives from the Virginia Recreation and Park Society have indicated that any cost to providers to meet the requirements for therapeutic child development programs and special needs child day programs should be minimal. The agency foresees no disadvantages to the state or agency.

#### Summary:

*This regulation lists the standards that child day centers, including therapeutic child development and special needs child day programs serving children of preschool age and younger, must meet to be licensed by the Department of Social Services. The following areas are addressed in the regulation: administration, personnel, physical plant, staffing and supervision, program, special care provisions and emergencies, special services and the Montessori Module. The proposed amendments add therapeutic recreation standards as required by Chapters 730 and 742 of the 1993 Acts of Assembly. In addition, the standards are being revised as follows:*

1. § 2.29, Tuberculosis examination for staff, requires a tuberculosis test every two years instead of just when hired. This change is based on the increased incidence of tuberculosis in the last few years.

# Proposed Regulations

2. § 3.6, *Administrators qualifications*, reduces the qualifications of administrators who also perform program director responsibilities. This will reduce the cost for owners and make it easier to hire administrators. It will also make it easier for owners of businesses to open centers. This revision lessens the impact of the regulation.

3. § 5.3, *Tuberculosis tests for contract staff*, requires contract staff who work directly with children to meet applicable requirements including tuberculosis tests.

4. § 7.21 was added to require at least one staff member and also one person on all field trips or wherever children are in care to be trained in age appropriate cardiopulmonary resuscitation (CPR).

5. § 8.6, *Food from home*, allows lunches to be brought from home for preschool children. The impact will be to families using licensed centers. This may reduce the cost for some providers who choose to stop serving lunches but it will also transfer the responsibility from the provider to the parents to provide the daily meals/snacks for the child at the center.

VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.

## PART I. INTRODUCTION.

### Article 1. Definitions.

#### § 1.1. Definitions.

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

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. Several four- or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year and a staff-to-children ratio of 1:15 is maintained in that group.

*"Center"* means a child day center.

*"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 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;

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 licensure;

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 wher.

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 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 A 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 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 accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs which complies with the provisions of § 63.1-196.3:1 : The provisions of this subdivision shall expire on July 1, 1994; or

13. Prescribed therapeutic recreation programs

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

14. 13. 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.

Note: This does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.

"Children with disabilities" means those children evaluated as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, a serious emotional disturbance, a severe or profound disability, a specific learning disorder, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness.

"Commissioner" means the commissioner of Social Services, also known as the director of the Virginia Department of Social Services.

"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 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.

"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

# Proposed Regulations

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in the event of a fall while the equipment is in use.

*"Individual service, education or treatment plan"* means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations and intervention strategies. In addition, the service, education or treatment plan clearly indicates documentation and reassessment/evaluation strategies.

*"Intervention strategies"* means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

*"Licensee"* means any individual, partnership, association, public agency, or corporation to whom the license is issued.

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

*"Montessori preschools"* means educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, ~~American Association~~ 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.).

*"Special needs child day program"* means a program exclusively serving children with disabilities and which meets the child day center definition.

*"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 licensure.

*"Staff"* means administrative, activity, service, and volunteer personnel including the licensee when the licensee is an individual who works in the facility.

*"Staff positions"* are defined as follows:

*"Aide"* means the individual designed 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.

Exception: The administrator may perform staff orientation/training or program development functions if the administrator meets the qualifications of § 3.6 § 3.8 of these regulations and a written delegation of responsibility specifies the duties of the program director.

*"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.

*"Therapeutic child development program"* means a specialized program, including but not limited to therapeutic recreation programs, exclusively serving children with disabilities and meeting the child day center definition. An individual service, education or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.

*"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.

## Article 2. Legal Base.

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

§ 1.3. 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.

## Article 3. Purpose.

§ 1.4. The purpose of these minimum standards is to protect 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.

## Article 4. Applicability.

§ 1.5. The minimum standards in Part I through VIII and the Montessori Module in Part IX of these regulations for Montessori preschools 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.

## PART II. ADMINISTRATION.

### Article 1. Sponsorship.

§ 2.1. Each center shall have a ~~clearly identified~~ sponsor which shall be identified by its legal name in accordance with state requirements.

§ 2.2. 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 Social Services.

§ 2.3. 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.

### Article 2. Operational Responsibilities.

§ 2.4. As required in § 63.1-198 of the Code of Virginia, the sponsor shall afford the commissioner 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. The license shall be posted in a place conspicuous to the public, near the main entrance of the building or the main office.

§ 2.6. 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~~ . *These minimum standards are not intended to prevent reasonable accommodations for children with disabilities. If a variance is necessary to attain reasonable accommodation, contact your licensing specialist.*
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. 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. The ~~center sponsor~~ shall maintain public liability insurance for bodily injury *for each center site* with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate ~~or~~ . *A public sponsor may have equivalent self-insurance which is in compliance with local codes state code* . Evidence of insurance coverage shall be made available to the department's representative upon request ~~unless the center is self-insured~~ .

§ 2.9. 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. The center shall develop an annual plan for injury prevention. This plan shall be based on documentation of

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injuries and a review of the activities and services.

§ 2.11. 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 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. If children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children .

## Article 3. Policies and Procedures.

§ 2.14. 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 where a message can immediately be given to center staff ;
  - 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;

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; and

- i. Licensing information found in Appendix I.
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; and
    - c. Procedures for protecting children from traffic and other hazards during arrival and departure and when crossing streets.
  3. Program and activities:
    - a. Procedures and policies about accepting and storing children's personal belongings;
    - b. a. Discipline policies including acceptable and unacceptable discipline measures;
    - e. b. Food policies; and
    - d. c. Transportation safety policies and procedures when provided.
  4. Health and emergencies:
    - a. Procedures for storing and giving children's medications; and

b. Policy for reporting center staff to report suspected child abuse (Note: Section 63.1-248.3 of the Code of Virginia requires any person providing full or part-time child care for pay on a regularly planned basis to report suspected child abuse or neglect) .

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

1. Procedures for ~~earing for~~ supervising a child who may arrive after any scheduled start time of the center scheduled classes or activities, including field trips, have begun ;
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 childrer are at all times including field trips procedures t

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*assure that all children are accounted for before leaving a field trip site and upon return to center ; and*

4. Procedures for action in case of lost or missing children, ill or injured children, and medical emergencies ; and

5. Procedures for natural disasters, including but not limited to fire, flood, or other severe weather.

## Article 4. Records ; Logs, and Reports.

### § 2.16. General record keeping.

A. All children's records and personnel records shall be treated confidentially. Exception: Children's records 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. B. 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. Records may be kept at a central location except as indicated otherwise in these standards.~~

### § 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 and any special accommodations needed ;

9. Health information as required by §§ ~~2-26~~ §§ 2.32 through ~~2-28~~ 2.34 of these regulations;

Exception: When a center is located in the same building on the same premises 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~~ §§ 2.22 and ~~2-22~~ 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.

### § 2.18. Records for therapeutic child development programs and special needs child day programs.

A. For therapeutic child development programs, in addition to the requirements in § 2.17, each child's record shall also contain copies of required individual assessment plans and individual service, education and treatment plans.

B. For special needs child day programs, in addition to the requirements in § 2.17, each child's record shall also contain a copy of his initial individual assessment plan.

### ~~§ 2-18:~~ § 2.19. 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.

Exceptions: Reference checks are not required for:

- a. Staff hired before April 1, 1986, in centers initially licensed before July 1, 1993;
- b. Staff who began work before July 1, 1993, in previously excepted centers that were initially

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required to be licensed after July 1, 1993; 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.

3. A criminal record check as required by the Regulation for Criminal Record Checks for Child Welfare Agencies;

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

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

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

7. Health information as required by §§ 2.29 §§ 2.35 through 2.31 2.37 of these regulations;

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

9. Date of termination when applicable.

Note: 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.~~ § 2.20. The center shall keep a written log record of the following : 1. Children *children* in attendance each day ; .

2. Medication given to children as required by subdivisions 1 through 4 of § 7.17;

3. Children's accidents or injuries as required in subdivisions 1 through 7 of § 7.35;

4. Asbestos inspections as required in subdivision C 2 of § 4.2; and

5. Emergency evacuation practice drills as required in § 7.20.

§ 2.20. Reports shall be filed and maintained as follows: § 2.21. 1. The center shall inform the commissioner's representative ~~within two working days~~ immediately of the circumstances surrounding the following incidences:

a. Death of a child while under the center's

supervision , 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.~~

## Article 5.

### Enrollment and Termination Procedures.

~~§ 2.21.~~ § 2.22. 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.~~ § 2.23. 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.~~ § 2.24. Reserved.

~~§ 2.24.~~ § 2.25. When a center decides to terminate the enrollment of a child, the center shall provide the parent in writing the reasons for termination.

~~§ 2.25.~~ § 2.26. 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. 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.

Exception: Programs, where children attend two or fewer weeks, are not required to involve the child during this communication.

§ 2.27. For therapeutic child development programs and special needs child day programs, before admission of a child, there shall be personal communication between the director, or his designee, and the parent to determine the child's:

1. Level of general functioning as related to physical, affective/emotional, cognitive and social skills required for participation;

2. Activities for daily living; and

3. Any special medical procedures needed.

§ 2.28. Based upon the results of the personal communication required in § 2.27, the director, or his designee, shall determine the initial placement of the child pending completion of an individual assessment plan.

§ 2.29. Individual assessment.

A. For therapeutic child development programs and special needs child day programs, an individual assessment for each newly enrolled child shall be completed within six months before enrollment or 30 days after enrollment.

B. The assessment shall include:

1. Documentation of disability;
2. Current functional levels and skills capabilities in the areas of activities of daily living, affective/communicative, perceptual motor, physical and social development;
3. Recommendations for program placement;
4. Recommendations for accommodations for program participation.
5. Recommendations for program adjustments and special services; and
6. A description of physical adaptations and equipment need.

C. An individual assessment shall be completed for each child no less than once every 12 months.

§ 2.30. For therapeutic child development programs and special needs child day programs, upon completion of the individual assessment, the director or his designee, in a meeting with the child's parent and other professionals as deemed necessary, shall evaluate program placement and program accommodations for the child.

§ 2.31. Individual service, education or training plan.

A. For therapeutic child development programs, an individual service, education or training plan for each newly enrolled child shall be developed within 60 days after enrollment.

B. The individual service, education or training plan shall be based on an analysis of the child's individual assessment and developed by the director or his designee, and staff persons who supervise the child. The plan shall include the following:

1. An assessment of the child's general functioning;
2. Specific program accommodations and intervention strategies necessary for participation;

3. Monthly documentation of the child's progress; and

4. Evaluation criteria goals and goal attainment measures.

C. The initial and subsequent service, education or treatment plans, and any changes made to the plans shall be reviewed and approved in writing by the staff person who supervises the child and the administrator or director of the facility prior to implementation.

D. The individual service, education or treatment plan shall be reviewed and revised every three months and rewritten annually.

E. The child's individual service, education or treatment plan shall be developed and reviewed in partnership with the parent.

Article 6.  
Health for Children and Staff.

§ 2.26: § 2.32. 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.

Exemptions (subsection C of § 22.1-271.2 of the Code of Virginia and § 3.03 of the Regulations for the Immunizations of School Children.): 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 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.

§ 2.27: § 2.33. Physical examinations for children.

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;

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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.

## Exceptions:

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, 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 §§ 2.32 and 2-27 2.33 .

2. (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.

§ 2-28: § 2.34. 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. See Appendix II for a copy of this form.

Exception: 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.

§ 2-29: § 2.35. 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. The statement shall be submitted no later than five working days after employment or volunteering and shall:

1. Be dated within ~~30 days~~ two years before or five working days after employment of the individual;

*Exception: Staff hired before November 1, 1993, in centers newly subject to licensure effective July 1, 1993, shall submit a tuberculosis statement by June 1, 1995, that is dated no more than two years before the effective date of these regulations.*

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.

~~Exceptions: When a staff member terminates work at one licensed facility or public or private 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 licensure do not need to require staff hired before November 1, 1993 to submit a statement of tuberculosis screening.~~

B. The tuberculosis examination shall be repeated *before the date on the statement is two years old* and 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.

§ 2-30: § 2.36. 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 licensed mental health professional* skilled in the diagnosis and treatment of mental illness shall be obtained. The request for obtaining an examination may come from the licensee, administrator, or department.

§ 2-31: § 2.37. 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 *and no reasonable accommodation can be made to eliminate the risk*, 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 licensed mental health professional confirms that the risk has been eliminated or substantially reduced such that reasonable accommodations may be made. Such confirmation shall include a signed, dated statement from the physician or clinical psychologist licensed mental health professional.

## PART III. PERSONNEL.

### Article 1. General Qualifications.

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

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

§ 3.3. 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.

§ 3.4. 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.

§ 3.5. For therapeutic child development programs and special needs child day programs, staff shall have knowledge of diagnostic groups being served and disability issues including, but not limited to, functional abilities, accommodations, assessment techniques, behavior management, medical and health concerns.

§ 3.6. For therapeutic child development programs and

special needs child day programs:

1. Staff who work with children shall adapt or modify activities based on the assessment of the children's needs and functional abilities, and

2. Each child shall always be supervised by staff appropriately trained in the form of communication needed.

### Article 2. Qualifications by Job Responsibility.

~~§ 3.5.~~ § 3.7. All staff who work in multiple positions within the center shall meet the qualifications for each position. Note: 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.

~~§ 3.6.~~ § 3.8. Administrators.

There shall be an administrator designated to be in charge of the total operation of the center. Administrators ~~hired who assume the administrator responsibilities after the effective date of these regulations November 1, 1993,~~ who also perform responsibilities of the program director shall be at least 21 years of age and shall possess an endorsement, bachelor's degree or 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 meet one of the program director qualification options listed in § 3.11.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3.9. In addition to the requirements under § 3.8, the administrator of a therapeutic child development program and a special needs child day program shall have completed at least 15 semester hours from an accredited college or university, 21 quarter hours from an accredited college or university, or 60 hours of training and education in areas related to special needs children, such as special education, early childhood special education, therapeutic recreation, human development, human services or rehabilitation services.

~~§ 3.7.~~ § 3.10. 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.

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~~§ 3-8.~~ § 3.11. Program directors for centers with children of preschool age or younger.

A. Program directors hired or promoted before November 1, 1993, shall have until July 1, 1996, to meet one of the qualifications of subsection B of this section. Program directors hired or promoted after November 1, 1993, shall meet one of 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 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. 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
4. Two years of age appropriate, programmatic experience in the group care of children, of which one year of this experience shall be in a staff supervisory capacity, and at least one of the following educational backgrounds:
  - a. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university;
  - b. One year early childhood certificate from an accredited college or university that consists of at least 30 semester hours ; or
  - c. A Child Development Associate credential or equivalent as determined by the department based on documentation supplied by those claiming equivalency.

Note: For the programmatic experience to be considered age appropriate at least some of the experience shall be with children of preschool age or younger.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3.12. Program directors for therapeutic child development programs or special needs child day programs with children of preschool age or younger.

A. Program directors hired or promoted before June 1, 1995, shall have until June 1, 1998, 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 therapeutic child development programs and special needs child day programs 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 special needs related field from an accredited college or university and six months of programmatic experience in the group care of children with disabilities; or
2. An endorsement, or bachelor's degree in a special needs related field from an accredited college or university and one year of programmatic experience in the group care of children with disabilities; or
3. 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 with disabilities and one year of programmatic experience in the group care of children with disabilities; or
4. Two years of programmatic experience in the group care of children with disabilities of which one year of this experience shall be in a staff supervisory capacity, and at least one of the following education backgrounds:
  - a. Forty-eight semester hours or 72 quarter hours or college credit from an accredited college or university;
  - b. One year early childhood certificate from an accredited college or university that consists of at least 30 semester hours; or
  - c. A Child Development Associate credential or equivalent as determined by the department based on documentation supplied by those claiming equivalency.

~~§ 3-9.~~ § 3.13. 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 one of the qualifications of ~~§ 3-8~~ § 3.11 . 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 one of the qualifications of ~~§ 3-8~~ § 3.11 . The

grandfather clause as stated in subsection A of § 3-8 § 3.11 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 one of the qualifications of § 3-8 § 3.11. The grandfather clause stated in subsection A of § 3-8 § 3.11 shall also apply to back-up program directors.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3-10: § 3.14. Program leaders and child care supervisors.

Program leaders and child care supervisors 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 November 1, 1993, and who work with children of preschool age or younger shall meet one of the program director qualifications in § 3-8 § 3.11 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. 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 six months of age appropriate, programmatic experience in the group care of children; or
3. A one year early childhood certificate from an accredited college or university that consists of at least 30 semester hours and six months of age appropriate, programmatic experience in the group care of children; or
4. A Child Development Associate credential; or
5. One year of age appropriate, programmatic experience in the group care of children and participation in a staff training plan of at least 10 hours. The training plan shall reflect developmentally appropriate practices and be conducted within six months of employment or promotion to a program leader at the center.

Note: For the programmatic experience to be considered age appropriate, at least some of the experience shall be with children of preschool age or younger.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3.15. Program leaders and child care supervisors for

therapeutic child development programs or special needs child day programs.

Program leaders and child care supervisors of a therapeutic child development program or a special needs child day program 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 November 1, 1993, shall meet one of the program director qualifications in § 3.12 or possess one of the following:

1. An endorsement or bachelor's degree in a special needs related field from an accredited college or university; or
2. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which six semester hours or nine quarter hours are in subjects relating to group care of children and six semester hours or nine quarter hours are in subjects relating to group care of children with disabilities; and six months of programmatic experience in the group care of children with disabilities; or
3. One year of age appropriate, programmatic experience in the group care of children, of which at least six months shall be with children with disabilities.

§ 3-11: § 3.16. Aides.

A. 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.

B. For therapeutic child development programs and special needs child day programs, all aides shall possess competency-based knowledge and skills specific to the disabilities of the children in care prior to working with children.

§ 3-12: § 3.17. Volunteer personnel.

Volunteer personnel shall meet the qualifications for the applicable position except that volunteer personnel who are parents and are sight supervised when with children and not counted in the staff-to-children ratios only need to meet the health requirements of §§ 2.29 through 2.31.

§ 3-13: § 3.18. 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.

Article 3.

Staff Orientation Training and Development.

# Proposed Regulations

~~§ 3-14.~~ § 3.19. 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.

~~§ 3-15.~~ § 3.20. Staff development.

A. The center shall have a *written* 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; and
4. Include annually the topics of safety for children, child development and discipline, and playground supervision for staff.

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 eight hours of staff development activities.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3.21. *In addition to the topics required elsewhere in these standards, therapeutic child development and special needs child day staff shall also receive training in:*

1. *Universal precautions procedures;*
2. *Activity adaptations;*
3. *Medication administration and medical procedures;*
4. *Disabilities precautions and health issues; and*

5. *Intervention strategies.*

§ 3.22. *Therapeutic child development and special needs child day staff who work directly with children shall annually attend 16 hours of staff development activities. In addition to the requirements of § 3.20 B, staff shall attend at least eight hours of training on topics related to the disabilities of the children in care.*

~~§ 3-16.~~ § 3.23. 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.

### Article 1. Approval from Other Agencies.

§ 4.1. Requirements prior to initial licensure.

A. Before issuance of initial license 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 or licensee to the licensing representative:

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.

Exception: Any building which is currently approved for school occupancy and which houses a public or private 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 two and a half 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 licensure 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

# Proposed Regulations

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 *or assumed* in the building;

4. Signature of the licensed asbestos inspector and management planner, including the Virginia license numbers *and a copy of the asbestos inspector license and management planner license valid at the time of the inspection*; 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; *and*
- c. Response actions recommended by the inspector; *and*
- d. ~~Verification that response actions have been completed.~~

Exception: Private, nonprofit schools providing educational instruction to children five years of age or older are also subject to the federal requirements of the Asbestos Hazard Emergency Response Act (AHERA). Private, nonprofit schools which are also subject to licensure and have had an asbestos inspection completed prior to the implementation of these regulations may submit the letter of completion they have received from the Department of Education, in lieu of the requirements of this subsection.

Private, nonprofit schools subject to the federal AHERA requirements, but which have not already received an asbestos inspection must comply with subsections B and C of this section.

C. If asbestos was found *or assumed* in the building, before a license will be issued the prospective licensee shall:

1. Submit to the department 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 *provided by a Virginia licensed asbestos contractor of removal*:

- a. *Removal, where applicable, at the center for review by the department's representative; and*
- b. *Response actions to encapsulate, enclose or repair the asbestos material have been completed, where applicable.*

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 management plan~~ are available for review. A copy of this notification shall be submitted to the department.

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

Exception: 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.

## § 4.2. Requirements subsequent to initial licensure.

A. Every 12 months, written documentation shall be obtained and provided to the licensing representative of inspection and approval from the appropriate fire prevention official that the center's facility complies with the Statewide Fire Prevention Code.

Exception: If a center is located in a building currently housing a public or private school during the school year, the school's fire inspection report may be accepted in lieu of the requirements of subsection A of this section if the inspection was completed within the past 12 months.

B. Subsequent to initial licensure, and as required by the local health department, written documentation shall be provided 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;

# Proposed Regulations

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 ; and

4. *The administrator shall submit to the department a signed, written statement that the recommendations of the management plan will be followed.*

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.~~ *provided by a Virginia licensed asbestos contractor, where applicable, indicating specific locations where asbestos containing material was removed or stating that all asbestos material was removed.* Unless all asbestos containing materials have been removed, the operations and maintenance plan shall be followed for any remaining asbestos material.

Exception: 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.

## Article 2. General Requirements.

§ 4.3. 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; and

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

3. Maintained in operable condition.

§ 4.4. Heating provisions.

A. ~~A heating system shall be provided. Heat shall be supplied from an approved, central heating system.~~ The heating system shall meet the following specifications:

~~1. It shall be approved by the appropriate building official;~~

2. 1. Heating shall not be provided by stoves;

~~3. 2. It shall be installed to prevent accessibility of children to the system; and~~

4. 3. 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.

Exception: 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 in accordance with the manufacturer's instructions .~~

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

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

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

§ 4.7. ~~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 ; , and

2. A working, nonpay telephone ; .

~~3. First aid kit or kits; and~~

~~4. Provision for locking medication as described in standard 7.16.~~

§ 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. Pesticides and insecticides shall not be stored in areas used by children and in areas used for food preparation or storage.*

*D. Cleaning materials shall not be located above food, food equipment, utensils or single-service articles and shall*

be stored in areas physically separate from food.

E. Cleaning materials (e.g., detergents, sanitizers and polishes) and insecticides/pesticides shall be stored in areas physically separate from each other.

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

G. 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.

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

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

§ 4.9. 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. Reserved

§ 4.11. Reserved

§ 4.12. Reserved

§ 4.13. Reserved

Article 3.  
Indoor Areas.

§ 4.14. There shall be 25 square feet of indoor space available to each child where activities are conducted.

Exception: Centers in operation before November 1, 1993, and newly subject to licensure Centers newly subject to licensure effective July 1, 1993, which were in operation before November 1, 1993, may have until July 1, 1996, to meet this requirement.

§ 4.15. 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, off hallways, restrooms, kitchens, storage rooms or closets, space occupied by equipment which is not used in or not contribute to the children's activities.

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

§ 4.17. Smoking shall be prohibited inside the center outside the center in the presence of children.

Exception: 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.

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

§ 4.19. 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 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 available activity space per infant when space occupied by cribs and changing tables is included in the calculation of available activity space.

§ 4.20. For therapeutic child development programs, special needs child day programs, an area equipped with vinyl-covered floor mats shall be available to children who use wheelchairs when activities call for children to be off of their wheelchairs.

Article 4.  
Restroom Areas and Furnishings.

§ 4.21. Centers shall have at least two toilets and two sinks.

§ 4.22. Each restroom provided for children shall

1. Be within a confined area;
2. Be accessible and within the building used by children;
3. Have toilets that are all flushable;
4. Have sinks that are all equipped with running water.

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which does not exceed 120°F; and

5. Be equipped with soap, toilet paper, and disposable towels.

~~§ 4.22.~~ § 4.23. 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~~ *one toilet is available to boys*.

~~§ 4.23.~~ § 4.24. 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.

~~§ 4.24.~~ § 4.25. 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.

Exceptions: ~~Centers in operation before November 1, 1993, and newly subject to licensure~~ *Centers newly subject to licensure effective July 1, 1993, which were in operation before November 1, 1993, may have until July 1, 1996, to meet this requirement and Montessori preschools may meet the alternative requirements in the Montessori Module.*

~~§ 4.25.~~ § 4.26. 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.

~~§ 4.26. Reserved.~~

~~§ 4.27. Reserved.~~

~~§ 4.28. Reserved.~~

~~§ 4.29. Reserved.~~

~~§ 4.29.~~ § 4.30. 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 § 5.17 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 generated;

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 § 5.17 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.

## Article 5. Outdoor Areas.

~~§ 4.30.~~ § 4.31. ~~Centers in operation before November 1, 1993, and newly subject to licensure~~ *Centers newly subject to licensure effective July 1, 1993, which were in operation before November 1, 1993, may have until July 1, 1996, to meet the requirements of §§ 4.30 §§ 4.31 through 4.30 4.40 .*

~~§ 4.31.~~ § 4.32. The outdoor play area shall provide a minimum of 75 square feet of space per child in the area at any one time.

~~§ 4.32.~~ § 4.33. Playgrounds shall be located and designed in a way to protect children from hazardous situations.

~~§ 4.33.~~ § 4.34. While § 6.35 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 IV.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

~~§ 4.34.~~ § 4.35. Ground supports shall be covered with materials which would protect children from injury.

~~§ 4.35.~~ § 4.36. Equipment used by children shall meet the following requirements :

1. Have no accessible openings between 3 1/2 inches and nine inches; All bounded openings which allow a 3 1/2 inch by 6 1/4 inch rectangle to fit through shall also allow a nine inch circle to fit through to avoid head entrapment. See Appendix V for additional information.

2. Have closed S-hooks when provided; and

3. Have no protrusions, sharp points, shearing points, or pinch points.

~~§ 4.36.~~ § 4.37. All outdoor swing seats shall be made of flexible material except for *special swing equipment for a child with a disability* or 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 . If special swings and infant swings are made of nonflexible material, precautions shall be taken to keep all other children out of the swing area.

~~§ 4.37.~~ § 4.38. Sandboxes with bottoms which prevent drainage shall be covered when not in use.

~~§ 4.38.~~ § 4.39. 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.

~~§ 4.39.~~ § 4.40. 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 ~~§ 4.31~~ § 4.32 .

## PART V. STAFFING AND SUPERVISION.

### Article 1. Supervision of Staff and Volunteers.

§ 5.1. 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.

§ 5.2. 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.

Exception: In a training environment, aides used beyond the required staff-to-children ratio of subdivisions 1 through 4 of § 5.17 shall not be included in the above requirement.

§ 5.3. When with children, contract employees shall be sight supervised by a staff member unless the contract employee meets Contract employees working with children shall meet the personnel, health, and orientation training requirements for the applicable position.

### Article 2. Supervision of Children.

§ 5.4. All staff assigned responsibility for supervision of children shall ensure their care, protection, and guidance at all times.

§ 5.5. 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 licensee or designated by the administrator.

§ 5.6. 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.

§ 5.7. 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.

§ 5.8. 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.

§ 5.9. Reserved

§ 5.10. When the outdoor activity area is not adjacent to

# Proposed Regulations

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the center, there shall be at least two staff on the outdoor activity area whenever one or more children are present.

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

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

## Article 3.

### Staff-to-Children Ratio Requirements.

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

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

§ 5.15. 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.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 5.16. During the designated rest period, the ratio of staff to children may be double the number of children to each staff required by subdivisions 2 through 4 of § 5.17 if:

1. A staff person is within sight and sound of the resting/sleeping children;
2. All staff counted in the overall rest period ratio are within the facility and available to assure safe evacuation in an emergency; and
3. An additional person is present at the center to help, if necessary.

§ 5.17. 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 for every four children;
2. For children 16 months old to two years: one staff member for every five children;
3. For children from two years to four years: one staff member for every 10 children; and

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

4. For children from four years to the age of eligibility to attend public school, five years by September 30: one staff member for every 12 children.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 5.18. For therapeutic child development programs, in each grouping of children, the following ratios of staff to children are required according to the disabilities of the children in care:

1. For children with severe and profound disabilities, multiple disabilities, or serious emotional disturbance: one staff member to three children.
2. For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities, or with autism: one staff member to four children.
3. For children diagnosed as educable mentally retarded (EMR), or developmentally delayed: one staff member to five children.
4. For children diagnosed with attention deficit disorder/hyperactivity disorder (ADD/HD): one staff member to five children.
5. Children diagnosed with specific learning disabilities: one staff member to six children.
6. When children with varied disabilities are regularly in ongoing groups, the ratios indicated in subdivisions 1 through 5 of this section shall be maintained for each level.

## PART VI. PROGRAMS.

### Article 1. Daily Schedule.

§ 6.1. 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.

§ 6.2. 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.

Exceptions: Outdoor activity is not required on days when an all day field trip occurs and Montessori preschools may meet the alternative requirements in the Montessori Module for subdivision 2 of this section.

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§ 6.3. 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.

§ 6.4. 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.

§ 6.5. There shall be a flexible schedule for infants based on their individual needs.

§ 6.6. 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.

§ 6.7. 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.

## Article 2. Activities.

§ 6.8. 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.

§ 6.9. To promote emotional development, the center 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.

§ 6.10. 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.

§ 6.11. 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.

§ 6.12. A variety of children's activities shall be provided that allow for group and individual involvement and child and staff initiation.

§ 6.13. 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.

§ 6.14. The center shall provide a balance of active and quiet activities.

§ 6.15. Children of all ages shall be allowed to rest or sleep as needed on cribs, cots, mats, or beds, as appropriate.

§ 6.16. Daily activities and experiences for preschool children, which are explained in Appendix V VI, shall include, but not be limited to:

1. Art activities;
2. Rhythm, movement, and music;
- ~~3. Language and communication experiences;~~
3. Sensory experiences and exploration of the environment;
4. Construction;
5. Social living;
6. Water and sand play;
7. Small motor activities; and

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## 9. 8. Large motor activities.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 6.17. For toddlers, the center shall provide daily equipment and opportunities for sensory and perceptual experiences, large and small motor development, and language development.

§ 6.18. Daily activities and experiences for toddlers, which are explained in Appendix VI VII, 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.

§ 6.19. Staff shall encourage language development by one-to-one face-to-face conversations giving toddlers time to initiate and respond; labeling and describing objects and events; helping children put feelings into words; and expanding on toddler language.

§ 6.20. Staff shall express affection, support toddler's growing independence such as dressing and eating, and making choices in activities and routines.

§ 6.21. Staff shall support toddler's developing self-control by expressing feelings with words, giving positively worded directions, and modeling and redirecting behavior.

§ 6.22. Parents of toddlers shall receive daily verbal feedback about:

1. Daily activities;
2. Physical well-being; and
3. Developmental milestones.

§ 6.23. For infants, the center shall provide daily equipment and opportunities for sensory and perceptual experiences, large and small motor development, and language development.

§ 6.24. Staff shall promptly respond to infants' needs for food and comfort.

§ 6.25. Infant play spaces 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.

Note: Play spaces may include but not be limited to cribs, infant seats, infant swings, high chairs, and floor area.

§ 6.26. 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 selection of toys available to the infant every 30 minutes or more often as determined by the needs and demands of the individual infant.

§ 6.27. 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 *if he is uncomfortable or unsafe*.

§ 6.28. Stimulation shall be regularly provided for infants in a variety of ways including being held, cuddled, talked to, and played with by staff.

§ 6.29. 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.

§ 6.30. Resting or sleeping infants and toddlers shall be individually checked at least every 30 minutes.

## Article 3. Parental Involvement.

§ 6.31. 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.

§ 6.32. The center shall encourage parental involvement on a volunteer basis in appropriate center activities.

§ 6.33. Staff shall frequently and in person share

information with parents about their child's health, development, behavior, adjustment, and needs.

## Article 4. Equipment and Materials.

§ 6.34. All furnishings, equipment, and materials shall be of a developmentally appropriate size for the child using it.

§ 6.35. 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.

§ 6.36. Indoor slides and climbing equipment shall not be over bare concrete, hardwood floors, masonry, vinyl, tile surface or similar surface flooring constructed of wood, masonry or vinyl.

§ 6.37. Storage space for play materials and equipment used by the children shall be accessible to children either independently or with help.

§ 6.38. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

§ 6.39. All disposable products shall be used once and discarded.

§ 6.40. Disposable dishes and utensils shall be sturdy enough to contain food without leakage and to prevent harm and injury to children.

§ 6.41. 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.

§ 6.42. 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.

§ 6.43. 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.

§ 6.44. Playpens and walkers shall not be used.

§ 6.45. 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.

§ 6.46. Cribs, cots, rest mats, and beds shall be marked or identified in some way for use by a specific child.

§ 6.47. Double decker cribs, cots, or beds, or other sleeping equipment which is when stacked shall not be used.

§ 6.48. Occupied cribs, cots, rest mats, and beds shall be at least 2-1/2 feet from any heat source in use.

§ 6.49. There shall be at least 15 inches of space between sides and ends of occupied cots, beds, and rest mats.

Exception: Fifteen 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.

§ 6.50. If rest mats are used, they shall have comfortable cushioning and be sanitized between each use.

§ 6.51. 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.

§ 6.52. 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.

§ 6.53. No cribs shall be placed where objects outside the crib such as cords from blinds or curtains are in reach of infants or toddlers.

§ 6.54. 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

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occupied cribs and other furniture when that space is the walkway for staff to gain access to any child in any crib.

§ 6.55. 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.

§ 6.56. Pillows shall not be used by children under two years of age.

§ 6.57. No toys shall be hung over or attached to cribs.

§ 6.58. § 6.57. 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 pillow cases.

E. Mattresses when used shall be covered with a waterproof material which can be easily sanitized.

## Article 5. Behavior Guidance.

§ 6.59. § 6.58. 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.

§ 6.60. § 6.59. 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.

§ 6.61. § 6.60. A child shall not be shaken at any time.

§ 6.62. § 6.61. 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.

§ 6.63. § 6.62. 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.

§ 6.64. § 6.63. 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.

§ 6.65. § 6.64. 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. *This does not apply to safety equipment such as cribs, high chairs and safety gates when used for the intended purpose.*

§ 6.66. § 6.65. Staff shall not give a child authority to punish another child nor shall staff consent to a child punishing another child.

§ 6.67. § 6.66. Staff shall follow the center's policy on acceptable and unacceptable discipline methods.

§ 6.68. § 6.67. Behavior problems of children of preschool age and younger shall be dealt with promptly.

## Article 6. Swimming and Wading Activities.

§ 6.69. 6.68. Staff and supervision.

A. The staff-child ratios required by subdivisions 1 through 4 of § 5.17 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 lifesaver 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

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be on duty supervising the children during swimming or wading activities when one or more children are in the water.

## § 6.70. § 6.69. 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.

## § 6.71. § 6.70. General.

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.

### Article 1. Preventing the Spread of Disease.

§ 7.1. If a child arrives at the center with the signs or symptoms listed in § 7.3, the child shall not be allowed to attend for that day.

§ 7.2. Staff with training as required in ~~§ 3.16~~ § 3.23 shall observe daily each child for signs and symptoms of illness.

§ 7.3. 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. *Recurrent vomiting or diarrhea; or*

~~2.~~ 3. He has a communicable disease as delineated in the current Communicable Disease Chart recommendations for the exclusion of sick children. (Refer to Appendix ~~VH~~ VIII ).

§ 7.4. If a child needs to be excluded according to § 7.3, 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.

§ 7.5. When a child at the center has been exposed to a reportable communicable disease, the parent shall be informed.

§ 7.6. Children's hands shall be washed with soap and water before eating meals or snacks, after toileting, and after any contact with body fluids.

§ 7.7. Staff shall wash their hands with soap or germicidal

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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.

§ 7.8. When a child's clothing or diaper becomes wet or soiled, it shall be changed immediately.

§ 7.9. 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.

## Article 2. Medication.

§ 7.10. 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.

§ 7.11. 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 VIII is completed and on file; and
3. Methods to prevent use of outdated medication.

§ 7.12. The medication authorization shall be available to staff during the entire time it is effective.

§ 7.13. 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.

§ 7.14. All medication shall be in the original container with the prescription label or direction label attached.

§ 7.15. 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.

§ 7.16. 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.

§ 7.17. Centers shall keep a log record 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.

§ 7.18. Medication shall be returned to the parent as soon as the medication is no longer being administered.

## Article 3. Specialized Staff Training.

§ 7.19. First aid training.

There shall be at least one staff member *who is trained in first aid* 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 wherever children are in care*. This person shall be available to children and meet one of the following qualifications for first aid training:

1. Has a current first aid 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 *competency based* first aid course *equivalent to the curriculum which has been approved by the State Board of Health which meets the criteria described in Appendix X*; or
4. Be a R.N. or L.P.N. with a current license from the Board of Nursing.

§ 7.20. Reserved

## § 7.21. CPR training.

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 and wherever children are in care who has a current cardiopulmonary resuscitation (CPR) certificate. This training shall be appropriate to the age group the center serves and the instructor shall have a current certificate from the certifying agency which indicates that he meets one of the following qualifications:

1. Standard First Aid Instructor (American Red Cross);
2. CPR Instructor (American Red Cross); or
3. CPR Instructor (American Heart Association).

## § 7.21. Reserved

## § 7.22. Reserved

## § 7.23. Reserved

### Article 4.

#### First Aid and Emergency Supplies.

~~§ 7.23.~~ § 7.24. A first aid kit shall be on each floor of each building used by children and , on all field trips and wherever children are in care .

~~§ 7.24.~~ § 7.25. The required first aid kits shall include at a minimum:

1. Scissors;
2. Tweezers;
3. Gauze pads;
4. Adhesive tape;
5. Band-aids, assorted types;
6. An antiseptic cleansing solution;
7. An antibacterial ointment;
8. 7. Thermometer;
9. 8. Two or more triangular bandages;
10. 9. Disposable gloves; and
11. 10. The first aid instructional manual.

~~§ 7.25.~~ § 7.26. Each first aid kit shall be stored so that it is not available to children but is easily available to staff.

~~§ 7.26.~~ § 7.27. 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.

### Article 5.

#### Procedures for Emergencies.

~~§ 7.27.~~ § 7.28. 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.

~~§ 7.28.~~ § 7.29. Emergency evacuation procedures shall be posted in a location conspicuous to staff and children on each floor of each building of the center.

~~§ 7.29.~~ § 7.30. The center shall implement these emergency evacuation procedures through monthly practice drills and shall maintain a log record 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.

~~§ 7.30.~~ § 7.31. 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.

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~~§ 7.31.~~ § 7.32. The number of a regional poison control center shall be posted in a conspicuous place near each phone.

§ 7.32. 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.

§ 7.33. If an ambulance service is not readily available within 10-15 minutes, other transportation shall be available at all times in case of emergency.

§ 7.34. 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.

NOTE: 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.

§ 7.35. The center shall maintain a written log record 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.

§ 7.36. Reserved

## PART VIII. Special Services.

### Article 1. Nutrition and Food Services.

§ 8.1. Centers shall serve appropriate snacks or meals, or both, based on the hours of operation and time of the day.

§ 8.2. The center shall ensure that children arriving from a half-day, morning kindergarten program who have not

yet eaten lunch receive a lunch.

§ 8.3. ~~There shall be at least 1-1/2 hours between each meal and snack but no more than three hours between meals and snacks. The center shall serve snacks or meals at time intervals of at least one and one-half hours but no more than three hours unless there is a scheduled rest or sleep period for children between the meals and snacks.~~

§ 8.4. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

§ 8.5. 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.

§ 8.6. ~~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 When centers choose to provide meals or snacks ,~~ 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 IX XI .
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 X XII 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;
  - 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.

~~Exceptions: 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 before November 1, 1993, and newly subject to licensure may have until July 1, 1996, to provide meals.~~

§ 8.7. When food is brought from home, the following shall apply:

1. ~~The food shall not be subject to rapid deterioration or spoilage;~~

2. 1. The center shall give parents the USDA requirements and a list of suggested nonperishable food. Appendix ~~IX~~ XI has the requirements of USDA.

3. 2. The food shall be clearly labeled in a way that identifies the owner;

4. 3. 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. 4. All unused portions of food shall be discarded and not served again.

§ 8.8. If a catering service is used, it shall be approved by the local health department.

§ 8.9. 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.

§ 8.10. Children of preschool age and younger shall be encouraged to feed themselves.

§ 8.11. During meal and snack times with preschoolers and toddlers, staff shall sit with these children when not serving food to them.

§ 8.12. Foods easily causing choking, such as but not limited to hard candy, popcorn, ~~raisins~~, seeds, nuts, whole hot dogs, hot dogs sliced in rounds, and uncut grapes, shall not be served to children three years of age or younger.

§ 8.13. High chairs, infant carrier seats, or feeding tables shall be used for children under 12 months who are not held while being fed.

§ 8.14. The record of each child on formula shall contain:

1. The brand of formula, and
2. The child's feeding schedule.

§ 8.15. Infants shall be fed on demand or in accordance with parental instructions.

§ 8.16. Prepared infant formula shall be refrigerated and clearly labeled in a way that identifies the child. See Appendix ~~XI~~ XIII for recommendations about the safe use of microwaves to heat infant formula.

§ 8.17. Bottle fed infants who cannot hold their own

bottles shall be picked up and held when fed. Bottles shall not be propped.

§ 8.18. No child shall be allowed to drink or eat while walking around.

§ 8.19. 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.

§ 8.20. 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.

§ 8.21. Mothers shall be allowed to breast-feed their infants at the facility.

§ 8.22. Unless written instructions from a physician indicate differently, staff shall feed semisolid food with a spoon.

§ 8.23. 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.

§ 8.24. *For therapeutic child development programs and special needs child day programs, the consistency of food shall be appropriate to a child's special feeding needs. Necessary and adaptive feeding equipment and feeding techniques shall be used for children with special feeding needs.*

## Article 2.

### Transportation and Field Trips.

§ 8.24. § 8.25. 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.

§ 8.25. 8.26. 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~~ *locks manufactured for the purpose of transporting human beings seated in an enclosed area* ;
2. The vehicle's seats shall be attached to the floor;
3. The vehicle shall be insured with at least the minimum limits ~~set~~ *established* by the Virginia state statutes; and

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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 ; and

5. If volunteers supply personal vehicles, the center is responsible for ascertaining that the requirements of this section are met.

~~§ 8.26.~~ § 8.27. 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 *unless locks were not installed by the manufacturer of the vehicle* ;
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 ~~§§ 7.30~~ §§ 7.31 and ~~7.31~~ 7.32 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.

~~§ 8.27.~~ § 8.28. 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.

~~§ 8.28.~~ § 8.29. 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.

~~§ 8.29.~~ § 8.30. The staff-to-children ratios of subdivisions 1 through 4 of § 5.17 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.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

~~§ 8.30.~~ § 8.31. At least one staff member on field trips shall be trained in first aid according to subdivisions 1 through 4 of ~~§ 7.10~~ § 7.25 and shall be instructed on procedures to follow if there is a vehicle break down.

~~§ 8.31.~~ § 8.32. A first aid kit with the supplies mentioned

in subdivisions 1 through ~~11~~ 10 of ~~§ 7.24~~ § 7.25 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.

~~§ 8.32.~~ § 8.33. The center shall make provisions for providing children on field trips with adequate food and water.

~~§ 8.33.~~ § 8.34. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

~~§ 8.34.~~ § 8.35. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

~~§ 8.35.~~ § 8.36. 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.

~~§ 8.36.~~ ~~The center shall develop and implement procedures to assure that all children return to the facility after a field trip.~~

§ 8.37. Staff shall follow the center's transportation safety policy.

§ 8.38. 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.

*§ 8.39. For therapeutic child development programs providing transportation, nonambulatory children shall be transported in a vehicle which is equipped with a ramp or hydraulic lift to allow entry and exit.*

*Wheelchairs shall be equipped with seat belts and shall be securely fastened to the floor when used to seat children in a vehicle.*

*Arrangements of wheelchairs in a vehicle shall not impede access to exits.*

*§ 8.40. For therapeutic child development programs and special needs child day programs, when the center is responsible for providing transportation, the center shall develop a plan based on the needs of the children in care to assure their safe supervision during on-loading, off-loading and transporting and when 16 or more children are being transported, there shall be at least one adult besides the driver, for each group of 16.*

§ 8.41. For therapeutic child development programs, if a child has a known seizure disorder or neurological, genetic or physiological disability causing increased medical risk and that child is being transported, one adult who is not the driver and who is trained in CPR shall be present in the vehicle.

## Article 3. Animals and Pets.

§ 8.39. § 8.42. 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.

§ 8.40. § 8.43. 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.

§ 8.41. § 8.44. 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.

§ 8.42. § 8.45. Reserved

## Article 4. Evening and Overnight Care.

§ 8.43. § 8.46. 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.

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 § 6.58 § 6.57 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

§ 8.44. § 8.47. In centers providing overnight care, an operational tub or shower with heated and cold water shall be provided.

§ 8.45. § 8.48. When bath towels are used, they shall be assigned for individual use.

§ 8.46. § 8.49. Activities.

A. Activities for children in evening or overnight care shall include, as time allows, age-appropriate activities as described in §§ 6.16 through 6.21 and 6.23 through 6.28.

B. Quiet activities and experiences shall be available immediately before bedtime.

§ 8.47. § 8.50. For children receiving evening and overnight care, the provider shall offer a regularly scheduled evening meal and snack.

## PART IX. MONTESSORI MODULE.

### Article 1. Qualifications of a Montessori Preschool.

§ 9.1. Montessori preschools are educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, American Association 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. Meeting these Montessori standards shall afford the Montessori preschool 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.

§ 9.3. 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.

### Article 2. Specific Alternatives for Qualifying Montessori Preschools.

§ 9.4. Administrators.

The administrator of a Montessori preschool shall be at least 21 years of age and shall have or meet one of the

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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 Association~~ 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 preschool 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 Association~~ 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 preschool shall:

1. Be at least 21 years of age, and
2. Hold a teaching diploma recognized by American Montessori Society, ~~American Association~~ 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 preschool 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 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. The facilities of a Montessori preschool, 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. The Montessori materials at a Montessori preschool 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.

§ 9.10. A Montessori preschool shall have restrooms that are easily accessible with a ratio of one toilet and one sink for every 20 children.

§ 9.11. A Montessori preschool shall have a safe outdoor play area which allows for exploration of nature and provides a resilient surface in fall zones.

§ 9.12. A Montessori preschool shall maintain a balanced multi-age grouping, with a ratio of one staff member for every 15 children.

§ 9.13. Teachers at a Montessori preschool 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. A Montessori preschool 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. A Montessori preschool 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. 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.

§ 9.17. A Montessori preschool shall abide by the pedagogy and curriculum guidelines in the Montessori Module.

§ 9.18. 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 shall be no more than one to 20.

### Article 3. Montessori Preschool Standards.

§ 9.19. Hours and scope of operation.

A. A Montessori preschool 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 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.

§ 9.20. 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 preschool shall maintain a safe Montessori environment for the class.

C. Teachers at a Montessori preschool 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 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 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 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 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 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 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 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, 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 shall function at all times during the Montessori program according to the Montessori standards as outlined herein.

§ 9.21 Classroom materials.

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A. Classrooms at a Montessori preschool 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 shall have continuous access to these materials as deemed appropriate by the Montessori teacher.

C. These materials at a Montessori preschool 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 preschool shall be presented by the Montessori teacher in accordance with the Montessori curriculum standards as included herein.

§ 9.22. Curriculum guidelines, including appropriate materials for children from two years to six years, as stated below shall be followed in a Montessori preschool.

These requirements are based on guidelines used by American Montessori Society, ~~American~~ Association Montessori Internationale, National Council of Montessori Education, and Saint Nicholas Montessori teacher training.

## PRACTICAL LIFE

Preliminary Exercises	Purpose
Spooning; Pouring rice; Pouring water Age: 2 1/2 - 3 1/2	To teach the child muscular control, care, exactness, how to pour.
Napkin folding Age: 2 1/2 - 4	Purpose  To teach muscular control, exactness. Indirect preparation for geometry.
Care of the Environment	Purpose
Table washing; Dusting; Polishing wood; Polishing metal; Arranging flowers; Sweeping Age: 2 1/2 - 4 and up	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.

Care of the Person	Purpose
Pressing frames; Polishing shoes; Washing hands Age: 2 1/2 - 4 and up	To teach the child to care for himself, to take pride in his person, to gain independence and self-worth

Grace and Courtesy	Purpose
How to interrupt, listen, make way, pass How to greet, introduce oneself, offer a chair, take a cookie, serve others, carry scissors, etc. Age: 2 1/2 and up	To help the child develop understanding or rules of grace and courtesy, to adapt and be accepted into a social group.

Movement	Purpose
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 games, respect silence, etc. Age: 2 1/2 and up	To learn control of movement, self awareness of ones self, purposeful activity order, respect for persons and property, attention to details, and environment.

## SENSORIAL - Aid to child's processes of classification

Visual Discrimination	Purpose
Pink Tower Broad Stair Long Stair Solid Cylinders Color tablets Geometric Cabinet Biology Cabinet Binomial & trinomial cube Constructive triangles Super imposed geometric figures Knobless Cylinders Solid Geometric shapes Mystery bag Progressive Exercises Age: Progressive from 2 1/2 to 4 1/4 +	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.
Auditory discrimination	Purpose
Sound boxes, Bells, Listening exercises Age: 2 1/2 and up	Training of auditory sense, discrimination of sounds, development of listening skills, discrimination of tones.
Tactile Sense	Purpose
Rough and smooth boards, Rough and smooth tablets, Fabrics Age: 2 1/2 - 3 1/2	Development of tactile sense, control of muscular action and lightness touch. Indirect preparation for writing.
Baric, Thermic, Olfactory Senses	Purpose

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Baric tablet, Thermic bottles, Scent boxes, and bottles  
Age: 2 1/2 and 3 1/2

Further develop senses. Help one to be aware of one's environment.

more advanced level.

Punctuation - To help the child communicate more effectively in his written work.

## 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

Work Study - To allow the child to explore words on a

### Reading & Writing of Music

Green boards with notes; Green manuscript board; White music charts; Summary exercises; Learning songs; Musical instruments; etc.  
Age: 4 1/2 and up

### Purpose

To recognize and create the language of musical composition through notation and lyrics.

## 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 addition math.

Age: 4

### Decimal system (Golden Bead Exercises)

Introduction of beads  
Introduction of cards  
Cards and beads together  
Processes of Addition, Subtraction,  
Multiplication, division  
Age: 4 1/2 to 5 1/2 +

### 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.

### Further Exercises in Math Purpose

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  
Age: 5 - 6 1/2 and up

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.

## GEOGRAPHY

Sandpaper globe; Land and water forms; Painted globe; Puzzle maps; Pictures; Definition cards; Stories; Simple reference books  
Age: 2 1/2 +

### Purpose

To introduce the child to the concepts of physical political, economic geography, inter-dependence of man and related language.

## 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.

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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 +

the facility to meet applicable fire, health, and building codes.

Compliance with standards is determined by announced and unannounced visits to the program by licensing staff within the Department of Social Services. In addition, parents or other individuals may register a complaint about a program which will be investigated if it violates a standard.

Three types of licenses may be issued to programs. Conditional licenses may be issued to a new program to allow up to six months for the program to demonstrate compliance with the standards. A regular license is issued when the program substantially meets the standards for licensure. A provisional license, which cannot exceed six months, is issued when the program is temporarily unable to comply with the standards. Operating without a license when required constitutes a misdemeanor which, upon conviction, can be punishable by a fine of up to \$100 or imprisonment of up to 12 months or both for each day's violation.

If you would like additional information about the licensing of child day programs or would like to register a complaint, please contact the Regional Office of Social Services closest to you.

\* 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.

## Appendix I (7/93)

### LICENSING INFORMATION FOR PARENTS ABOUT CHILD DAY PROGRAMS

The Commonwealth of Virginia helps assure parents that child day programs that assume responsibility for the supervision, protection, and well-being of a child for any part of a 24-hour day are safe. Title 63.1, Chapter 10 of the Code of Virginia gives the Department of Social Services authority to license these programs. While there are some legislative exemptions to licensure, licensed programs include child day centers, family day homes, child day center systems, and family day systems. The state may also voluntarily register family day homes not required to be licensed.

Standards for licensed child day centers address certain health precautions, adequate play space, a ratio of children per staff member, equipment, program, and record keeping. Criminal records checks and specific qualifications for staff and most volunteers working directly with children are also required. Standards require

Fairfax Area Licensing Office  
3959 Pender Drive, Suite 320  
Fairfax, Virginia 22030  
(703) 934-1505

Northern Virginia Regional Office  
320 Hospital Drive, Suite #23  
Warrenton, Virginia 22186  
(703) 347-6345

Central Regional Office  
1604 Santa Rosa Road, Suite 130  
Richmond, Virginia 23229-5008  
(804) 662-9743

Eastern Regional Office  
Pembroke Office Park  
Pembroke Four Office Building, Suite 300  
Virginia Beach, Virginia 23462-5496  
(804) 473-2116

Verona Licensing Office  
Post Office Box 350  
Verona, Virginia 24482-0350  
(703) 248-9345

Piedmont Regional Office  
Commonwealth of Virginia Building  
210 Church Street, S.W., Suite 100  
Roanoke, Virginia 24011-1779  
(703) 857-7971

Abingdon Western Licensing Office

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190 Patton Street  
Abingdon, Virginia 24210  
(703) 628-5171

*Peninsula Licensing Office  
825 Diligence Drive, Suite 203  
Newport News, Virginia 23606  
(804) 594-7594*

**NOTICE:** The appendices and forms used in administering the Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger are not being published due to the large number; however, the name of each appendix and form is listed below and are available for public inspection at the Department of Social Services, 730 E. Broad Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219.

School Entrance Physical Examination and Immunization Certification, Appendix II

Art Materials: Recommendations for Children Under 12, Appendix III

Information from Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Appendix IV

Head Entrapment: Information from Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Appendix V

Preschool Activities, Appendix VI

Toddler Activities, Appendix VII

Communicable Disease Reference Chart for School Personnel, Appendix VIII

Medication Authorization, Appendix IX

First Aid Training, Appendix X

Child Care Food Program Meal Patterns, Appendix XI

Some Foods with Vitamin A and Vitamin C, Appendix XII

Protocols for Microwave Heating of Refrigerated Infant Formula, Appendix XIII

Initial Application for a License to Operate a Child Day Center (032-05-512/10, 6/94)

Renewal Application for a License to Operate a Child Day Center (032-05-225/9, 6/94)

VA.R. Doc. No. R94-1171; Filed August 3, 1994, 11:57 a.m.

\* \* \* \* \*

**Title of Regulation:** VR 175-09-01. Minimum Standards for Licensed Child Day Centers Serving School Age Children.

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

**Public Hearing Dates:**

October 11, 1994 - 4 p.m. (Wytheville)

October 13, 1994 - 3 p.m. (Verona)

October 17, 1994 - 4 p.m. (Fredericksburg)

October 19, 1994 - 4 p.m. (Norfolk)

Written comments may be submitted until October 22, 1994.

(See Calendar of Events section for additional information)

**Basis:** Section 63.1-202 of the Code of Virginia provides the statutory basis for the Child Day-Care Council to promulgate regulations for child day centers.

**Purpose:** The purpose of the proposed regulation is to provide protective oversight of school age children in child day centers including therapeutic child development programs and special needs child day programs. More specifically the purpose is to ensure that the activities, services, and facilities of the centers and therapeutic child development programs and special needs child day programs are conducive to the well-being of these children and that the risks in the environment of the centers are reduced for these children. The new requirements for therapeutic child development programs and special needs child day programs help assure the needs of children with disabilities are met while at the center.

**Substance and Impact:** This regulation describes the requirements that child day centers serving school age children must meet to become licensed by the Department of Social Services. The 1993 General Assembly session enacted Senate Bill 777 and House Bill 2380, which require the Child Day-Care Council to promulgate therapeutic recreation standards by July 1, 1995. The proposed child day center regulations include standards for these programs.

As of June 30, 1994, there were 1,531 child day centers licensed by the Department of Social Services. They have a licensed capacity for 125,232 children ranging from birth to 18 years of age. Centers serving school age children and school age children enrolled in the centers, therapeutic child development programs and special needs child day programs will be affected by this regulation.

It is not known how many therapeutic child development programs and special needs child day programs will become subject to licensure. Our best estimate is that fewer than 25 will be subject but it is unknown how many provide care to school age children. No specific localities will be particularly affected by the proposed amendments. The numbers of therapeutic child development programs are dictated by population density.

The council received information on the implementation

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of the child day center regulations which became effective November 1, 1993, and made decisions about the standards accordingly. The existing standards were revised predominantly for clarity which should have minimal impact. Changes that may have an impact include the following:

1. § 2.29, Tuberculosis examination for staff, is being revised to require a tuberculosis test every two years instead of just when hired. This change is based on the increased incidence of tuberculosis in the last few years. This will increase cost but most local health departments will do this testing for a minimal charge (usually \$5.00). When considering the high turnover rate of employees in the child care industry (employees leaving before two years have elapsed), this may have little effect on overall cost.

2. § 3.6, Administrators qualifications, reduces the qualifications of administrators who also perform program director responsibilities. This will reduce the cost for owners and make it easier to hire administrators. It will also make it easier for owners of businesses to open centers. This revision lessens the impact of the regulation.

3. § 5.3, Tuberculosis tests for contract staff, requires contract staff who work directly with children to meet applicable requirements including tuberculosis tests.

4. § 7.21 was added to require at least one staff member and also one person on all field trips or wherever children are in care to be trained in age appropriate cardiopulmonary resuscitation (CPR). Although prices of CPR courses vary across the state, a typical infant and child CPR course offered by the American Red Cross costs \$30 and takes five hours to complete. Sometimes the CPR training is included with a first aid course such as Community First Aid and Safety that costs \$38 (first aid training is already required by § 7.19). Certification in CPR needs to be updated yearly.

It is also possible for a staff member proficient in First Aid and CPR to become an American Red Cross first aid and CPR instructor which costs \$42 and takes 22 hours to complete. This instructor certification allows the person to train others at the center for a reduced cost (i.e., \$16 instead of \$30 for an infant and child CPR course). Currently a grant is available to pay for this instructor training. Also the American Red Cross will reimburse a person for the training if he teaches two volunteer community courses through their office within one year.

The regulations, which are required by law, should have minimal cost impact for the department beyond printing and distributing the new regulations to licensees and interested persons.

The funding sources for programs to implement the

standards will vary. These sources may include:

-Parent fees

-Private donations

-USDA reimbursements

-Payment for all or a portion of child care tuition by local departments of social services through AFDC Day Care, JOBS Day Care, Transitional Day Care, FSET, Fee System At-Risk and Fee System/Block Grant day care

-Grants from the Dependent Care Planning and Development 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 state and local level

Currently, Department of Social Services regulatory activities are supported primarily by general funds.

Small businesses that serve school age children and meet the definition of a child day center already must comply with the regulation. Changes made to the existing standards are predominantly clarity changes which should have a minimal impact. Regulations of child day centers will help assure parents safe choices for child care so they can work for small businesses. There will most likely be no impact by the new therapeutic child development and special needs child day standards due to the fact that all known therapeutic child development programs and special needs child day programs are operated by county or local governments or by nonprofit organizations.

Issues: This document is comprised of the following issues which impact child day centers serving school age children that are subject to licensure by the Department of Social Services: administration, personnel, physical plant, staffing and supervision, program, special care provisions and emergencies, special services and the Montessori Module.

The advantage of continuing implementation of this regulation is that it protects children in care at child day centers. This also helps assure parents safe choices for child care so they can work. The special requirements for therapeutic child development programs and special needs child day programs help assure the needs of children with disabilities are met while at the center.

The advantage of this regulation for the Department of Social Services is that it allows the department to comply with statutory intent. The disadvantage of this regulation is that centers may need to spend money to meet the requirements although, with this revision, representatives

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from the Virginia Recreation and Park Society have indicated that any cost to providers to meet the requirements for therapeutic child development programs and special needs child day programs should be minimal.

## Summary:

*This regulation lists the standards that child day centers including therapeutic child development programs and special needs child day programs serving school age children must meet to be licensed by the Department of Social Services. The following areas are addressed in the regulation: administration, personnel, physical plant, staffing and supervision, program, special care provisions and emergencies, special services and the Montessori Module. The proposed amendments add therapeutic recreation standards as required by Chapters 730 and 742 of the 1993 Acts of Assembly. In addition, the standards are being revised as follows:*

*1. § 2.29, Tuberculosis examination for staff, is being revised to require a tuberculosis test every two years instead of just when hired. This change is based on the increased incidence of tuberculosis in the last few years.*

*2. § 3.6, Administrators qualifications, reduces the qualifications of administrators who also perform program director responsibilities. This will reduce the cost for owners and make it easier to hire administrators. It will also make it easier for owners of businesses to open centers. This revision lessens the impact of the regulation.*

*3. § 5.3, Tuberculosis tests for contract staff, requires contract staff who work directly with children to meet applicable requirements including tuberculosis tests.*

*4. § 7.21 was added to require at least one staff member and also one person on all field trips or wherever children are in care to be trained in age appropriate cardiopulmonary resuscitation (CPR).*

VR 175-09-01. Minimum Standards for Licensed Child Day Centers Serving School Age Children.

## PART I. INTRODUCTION.

### Article 1. Definitions.

#### § 1.1. Definitions.

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

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.

"Camp" means a child day camp.

"Center" means a child day center.

"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 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;

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 licensure;

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 difference focus area at a site offering a variety of activities and such children's

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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 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 A 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 preschool or nursery school program operated by a private school which is accredited by a statewide ~~accreditation~~ *accrediting* organization

recognized by the State Board of Education or accreditation by the National Association for the Education of Young Children's National Academy of Early Childhood Programs which complies with the provisions of § 63.1-196.3:1. ~~The provisions of this subdivision shall expire on July 1, 1994; or~~

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

14. ~~13.~~ 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.

*Note: This does not include programs such as drop-in playgrounds or clubs for children when there is no service arrangement with the child's parent.*

*"Children with disabilities"* means those children evaluated as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe or profound disability, a specific learning disorder, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness.

*"Commissioner"* means the commissioner of Social Services, also known as the director of the Virginia Department of Social Services.

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

*"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.

*"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.

*"Individual service, education or treatment plan"* means a plan identifying the child's strengths, needs, general functioning and plan for providing services to the child. The service plan includes specific goals and objectives for services, accommodations and intervention strategies. In addition, the service, education or treatment plan clearly indicates documentation and reassessment/evaluation strategies.

*"Intervention strategies"* means a plan for staff action that outlines methods, techniques, cues, programs, or tasks that enable the child to successfully complete a specific goal.

*"Licensee"* means any individual, partnership, association, public agency, or corporation to whom the license is issued.

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

*"Montessori preschools"* are means educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, American Association 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.

*"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. *Several four- or five-year-old children included in a group of school age children may be considered school age during the summer months if the children will be entering kindergarten that year and a staff-to-children ratio of 1:15 is maintained in that group.*

*"Special needs child day program"* means a program exclusively serving children with disabilities and which meets the child day center definition.

*"Specialty camps"* "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 licensure.

*"Staff"* means administrative, activity, service, and volunteer personnel including the licensee when the licensee is an individual who works in the facility.

*"Staff positions"* are defined as follows:

*"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.

Exception: The administrator may perform staff orientation, training or program development functions if the administrator meets the qualifications in § 3-6 § 3.8 of these regulations and a written delegation of responsibility specifies the duties of the program director.

*"Administrator"* means a manager or coordinator designated to be in charge of the total operation and

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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.

*"Therapeutic child development program" means a specialized program including but not limited to therapeutic recreation programs, exclusively serving children with disabilities and meeting the child day center definition. An individual service, education or treatment plan is developed and implemented with the goal of improving the functional abilities of the children in care.*

*"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.*

## Article 2. Legal Base.

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

§ 1.3. 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.

## Article 3. Purpose.

§ 1.4. 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.

## Article 4. Applicability.

§ 1.5. The minimum standards in Part I through VIII and the Montessori Module in Part IX of these regulations for Montessori preschools wanting to meet alternative standards, apply to child day centers serving school age children as defined in § 1.1 of these standards.

## PART II.

## ADMINISTRATION.

### Article 1. Sponsorship.

§ 2.1. Each center shall have a clearly identified sponsor which shall be identified by its legal name in accordance with state requirements.

§ 2.2. 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 Social Services.

§ 2.3. 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.

### Article 2. Operational Responsibilities.

§ 2.4. As required by § 63.1-198 of the Code of Virginia, the sponsor shall afford the commissioner 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. The license shall be posted in a place conspicuous to the public, near the main entrance of the building or the main office.

§ 2.6. 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 . These minimum standards are not intended to prevent reasonable accommodations for children with disabilities. If a variance is necessary to attain reasonable accommodation, contact your licensing specialist.*
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. 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. The ~~center~~ sponsor shall maintain public liability insurance for bodily injury for each center site with a minimum limit of at least \$500,000 each occurrence and with a minimum limit of \$500,000 aggregate ~~or~~. A public sponsor may have equivalent self-insurance which is in compliance with ~~local codes~~ state code. Evidence of insurance coverage shall be made available to the department's representative upon request ~~unless the center is self-insured~~.

§ 2.9. 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. 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. 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 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. If children 13 years or older are enrolled in the program and receive supervision in the licensed program, they shall be counted in the number of children receiving care and the center shall comply with the standards for these children.

### Article 3. Policies and Procedures.

§ 2.14. 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 where a message can immediately be given to center staff;
- 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;
- 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; and
- i. Licensing information found in Appendix I.

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

#### 3. Program and activities:

- a. Procedures and policies about accepting and storing children's personal belongings;
- b. a. Discipline policies including acceptable and unacceptable discipline measures;
- e. b. Food policies; and
- d. c. Transportation safety policies and procedures when provided.

#### 4. Health and emergencies:

- a. Procedures for storing and giving children's

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medications; and

b. Policy for ~~reporting center staff to report~~ suspected child abuse (*Note: Section 63.1-258.3 of the Code of Virginia requires any person providing full or part-time child care for pay on a regularly planned basis to report suspected child abuse or neglect*).

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

1. Procedures for ~~earing for supervising~~ a child who may arrive after ~~any scheduled start time or the center scheduled classes or activities, including field trips, have begun~~ ;

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 procedures to assure that all children are accounted for before leaving a field trip site and upon return to center~~ ; ~~and~~

4. Procedures for action in case of lost or missing children, ill or injured children, *and* medical emergencies ; ; and

5. *Procedures for* natural disasters, including but not limited to fire, flood, or other severe weather.

## Article 4.

### Records ; Logs, and Reports.

§ 2.16. General record keeping.

A. All children's records and personnel records shall be treated confidentially. Exception: Children's records 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. B. 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. Records may be kept at a central location except as indicated otherwise in these standards.~~

§ 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 *and any special accommodations needed* ;

9. Health information as required by §§ ~~2-26~~ §§ 2.32 through ~~2-28~~ 2.34 of these regulations;

Exception: ~~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 the child's record has a parental statement verifying the school's possession of the health record .~~

10. Written agreements between the parent and the center as required by §§ ~~2-21~~ §§ 2.22 through ~~2-23~~ 2.24 ;

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. *Records for therapeutic child development programs and special needs child day programs.*

*A. For therapeutic child development programs, in addition to the requirements in § 2.17, each child's record shall also contain copies of required individual assessment plans and individual service, education or treatment plans.*

*B. For special needs child day programs, in addition to the requirements in § 2.17, each child's record shall also*

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contain a copy of his initial individual assessment plan.

§ 2.18: § 2.19. 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.

Exceptions: Reference checks are not required for:

- a. Staff hired before April 1, 1986, in centers initially licensed before July 1, 1993; and
  - b. Staff who began work before July 1, 1993, in previously excepted centers that were initially required to be licensed after July 1, 1993.
3. A criminal record check as required by the Regulation for Criminal Record Checks for Child Welfare Agencies;
  4. Name, address, and telephone number of a person to be notified in an emergency which shall be kept at the center;
  5. Written information to demonstrate that the individual possesses the education, orientation training, staff development, certification, and experience required by the job position;
  6. First aid and other certification as required by the responsibilities held by the staff member;
  7. Health information as required by §§ 2.29 §§ 2.35 through 2.37 of these regulations;
  8. Information, to be kept at the center, about any health problems which may interfere with fulfilling the job responsibilities; and
  9. Date of termination when applicable.

§ 2.19: § 2.20. The center shall keep a written log record of the following: 1. children in attendance each day ; .

2. Medication given to children as required in subdivisions 1 through 4 of § 7.17;
3. Children's accidents or injuries as required in subdivisions 1 through 7 of § 7.35;

4. Asbestos inspections as required in subdivision C 2 of § 4.2; and

5. Emergency evacuation practice drills as required in § 7.29.

§ 2.20: § 2.21. Reports shall be filed and maintained as follows: 1. The center shall inform the commissioner's representative within two working days immediately of the circumstances surrounding the following incidences:

- a. 1. Death of a child while under the center's supervision, and
  - b. 2. 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.

## Article 5.

### Enrollment and Termination Procedures.

§ 2.21: § 2.22. 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: § 2.23. 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: § 2.24. 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.

§ 2.24: § 2.25. When a center decides to terminate the enrollment of a child, the center shall provide the parent in writing the reasons for termination.

§ 2.25: § 2.26. Reserved.

§ 2.27. For therapeutic child development programs and special needs child day programs, before admission of a child, there shall be personal communication between the director, or his designee, and the parent to determine the child's:

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1. Level of general functioning as related to physical, affective/emotional, cognitive and social skills required for participation;
2. Activities for daily living; and
3. Any special medical procedures needed.

§ 2.28. Based upon the results of the personal communication required in § 2.27, the director, or his designee, shall determine the initial placement of the child pending completion of an individual assessment plan.

§ 2.29. Individual assessment.

A. For therapeutic child development programs and special needs child day programs, an individual assessment for each newly enrolled child shall be completed within six months before enrollment or 30 days after enrollment.

B. The assessment shall include:

1. Documentation of disability;
2. Current functional levels and skills capabilities in the areas of activities of daily living, affective/communicative, perceptual motor, physical and social development;
3. Recommendations for program placement;
4. Recommendations for accommodations for program participation.
5. A description of physical adaptations and equipment needed.

C. An individual assessment shall be completed for each child no less than once every 12 months.

§ 2.30. For therapeutic child development programs and special needs child day programs, upon completion of the individual assessment, the director or his designee, in a meeting with the child's parent and other professionals as deemed necessary, shall evaluate program placement and program accommodations for the child.

§ 2.31. Individual service, education or training plan.

A. For therapeutic child development programs, an individual service, education or training plan for each newly enrolled child shall be developed within 60 days after enrollment.

B. The individual service, education or treatment plan shall be based on an analysis of the child's individual assessment and developed by the director or his designee, and staff persons who supervise the child. The plan shall include the following:

1. An assessment of the child's general functioning;
2. Specific program accommodations and intervention strategies necessary for participation;
3. Monthly documentation of the child's progress; and
4. Evaluation criteria goals and goal attainment measures.

C. The initial and subsequent service, education or treatment plans and any changes made to the plans shall be reviewed and approved in writing by the staff person who supervises the child and the administrator or director of the facility prior to implementation.

D. The individual service, education or treatment plan shall be reviewed and revised every three months and rewritten annually.

E. A copy of the initial plan and subsequent or amended service, education or treatment plans shall be given to the child's parent.

F. The child's individual service, education or treatment plan shall be developed and reviewed in partnership with the parent.

## Article 6. Health for Children and Staff.

~~§ 2.26.~~ § 2.32. 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.

Exemptions (subsection C of § 22.1-271.2 of the Code of Virginia and § 3.03 of the Regulations for the Immunizations of School Children.): 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.

~~§ 2.27.~~ § 2.33. Physical examinations for children.

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.

Exceptions:

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, 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 §§ 2.32 and 2-27 2.33 of these regulations.

2. 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.

~~§ 2-28.~~ § 2.34. 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. See Appendix II for a copy of this form.

Exception: 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.

~~§ 2-29.~~ § 2.35. 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. The statement shall be submitted no later than five working days after employment or volunteering and shall:

1. Be dated within ~~30 days~~ *two years* before or five working days after employment of the individual;

*Exception: Staff hired before November 1, 1993, in centers newly subject to licensure effective July 1, 1993, shall submit a tuberculosis statement by June 1, 1995, that is dated no more than two years before the effective date of these regulations.*

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.

~~Exceptions: When a staff member terminates work at one licensed facility or public or private 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 licensure do not need to require staff hired before November 1, 1993, to submit a statement of tuberculosis screening.~~

B. The tuberculosis examination shall be repeated *before the date on the statement is two years old* and 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.

~~§ 2-30.~~ § 2.36. 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~~ *licensed mental health professional* skilled in the diagnosis and treatment of mental illness shall be obtained. The request for obtaining an examination may come from the licensee, administrator, or department.

~~§ 2-31.~~ § 2.37. 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 *and no reasonable accommodation can be made to eliminate the risk*, 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 licensed mental health professional confirms that the risk has been eliminated or substantially reduced such that reasonable accommodations may be made. Such confirmation shall*

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include a signed, dated statement from the physician or ~~clinical psychologist~~ licensed mental health professional .

## PART III: PERSONNEL.

### Article 1. General Qualifications.

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

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

§ 3.3. 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.

§ 3.4. 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.

§ 3.5. *For therapeutic child development programs and special needs child day programs, staff shall have knowledge of diagnostic groups being served and disability issues including, but not limited to, functional abilities, accommodations, assessment techniques, behavior management, and medical and health concerns.*

§ 3.6. *For therapeutic child development programs and special needs child day programs:*

1. *Staff who work with children shall adapt or modify activities based on the assessment of the children's*

*needs and functional abilities; and*

2. *Each child shall always be supervised by staff appropriately trained in the form of communication needed.*

### Article 2. Qualifications by Job Responsibility.

~~§ 3.5.~~ § 3.7. All staff who work in multiple positions within the center shall meet the qualifications for each position.

Note: 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.

~~§ 3.6.~~ § 3.8. Administrators.

There shall be an administrator designated to be in charge of the total operation of the center. Administrators ~~hired who assume the administrator responsibilities~~ after the effective date of these regulations November 1, 1993, who also perform responsibilities of the program director shall be at least 21 years of age and ~~shall possess an endorsement, bachelor's degree or 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~~ meet one of the program director qualification options listed in § 3.11 .

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3.9. *In addition to the requirements under § 3.8, the administrator of a therapeutic child development program and a special needs child day program shall have completed at least 15 semester hours from an accredited college or university, 21 quarter hours from an accredited college or university, or 60 hours of training and education in areas related to special needs children, such as special education, early childhood special education, therapeutic recreation, human development, human services or allied health services.*

~~§ 3.7.~~ § 3.10. 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.

~~§ 3.8.~~ § 3.11. Program directors.

A. *Program directors hired or promoted before*

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November 1, 1993, shall have until July 1, 1996, to meet one of the qualifications of subsection B of this section. Program directors hired or promoted after November 1, 1993, shall meet the qualifications of subsection B of this section immediately.

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 § 3.6; in which case, the program director shall be at least 19 years of age.~~ Program directors and shall possess one of the following:

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; or
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; or
4. Three years of age appropriate, programmatic experience in the group care of children which has been obtained after the age of 16 and a high school diploma or G.E.D. if supervised by an administrator ~~meeting the qualifications of § 3.6 who is at least 21 years of age and possesses an endorsement, bachelor's degree or 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~~
5. Certification by a nationally recognized accrediting body whose staff qualification standards to meet minimum state regulations for the program director position as determined by the department based on documentation supplied by those claiming equivalency.

Note: For the programmatic experience to be considered age appropriate, at least some of the experience shall be with school age children.

~~Exception:~~ *Exceptions: A person between 19 and 21 years of age may serve as a program director if supervised by an administrator who visits the center daily and who is at least 21 years of age and possesses an endorsement, bachelor's degree or 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. Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 3.12. Program directors of a therapeutic child development program or a special needs child day program shall be at least 21 years of age and possess one of the following:

1. An endorsement, bachelor's or associate's degree in a special needs related field from an accredited college or university and six months of programmatic experience in the group care of children with disabilities; or
2. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which six semester hours or nine quarter hours are in subjects relating to group care of children and six semester hours or nine quarter hours are in subjects relating to group care of children with disabilities; and one year of programmatic experience in the group care of children with disabilities; or
3. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which six semester hours or nine quarter hours are in subjects relating to group care of children with disabilities; and two years of programmatic experience in the group care of children with disabilities of which one year of this experience shall be in a staff supervisory capacity; or
4. Three years of programmatic experience in the group care of children of which at least two years shall be with children with disabilities and which shall have been obtained after the age of 16, and a high school diploma or G.E.D., if supervised by an administrator who is at least 21 years of age and possesses an endorsement bachelor's degree or 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
5. Certifications by a nationally recognized accrediting body whose staff qualification standards meet minimum licensing standards for the program director of a therapeutic child development program or a special needs child day program position based on documentation supplied by those claiming equivalency. Certification must be recognized as proficient in working with children with disabilities.

§ 3.9. § 3.13. 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 one of the qualifications of subdivisions 1 through 5 of § 3.8 § 3.11 B

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. 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 *one of the qualifications of subdivisions 1 through 5 of § 3-8 § 3.11 B*

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 *one of the qualifications of subdivisions 1 through 5 of § 3-8 § 3.11 B*.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

~~§ 3-10.~~ *§ 3.14.* Program leaders and child care supervisors.

Program leaders and child care supervisors 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 work with school age children shall meet *one of the program director qualifications in § 3-8 § 3.11 B* 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. 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; or
3. Six months of age appropriate, programmatic experience in the group care of children.

Note: For the programmatic experience to be considered age appropriate, at least some of the experience shall be with school age children.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

*§ 3.15. Program leaders and child care supervisors of therapeutic child development programs or special needs child day programs.*

*Program leaders and child care supervisors of therapeutic child development programs or special needs child day programs 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 November 1, 1993, shall meet one of the program director qualifications in § 3.12 or possess one of the following:*

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

*2. Forty-eight semester hours or 72 quarter hours of college credit from an accredited college or university of which six semester hours or nine quarter hours are in subjects relating to group care of children and six semester hours or nine quarter hours are in subjects relating to group care of children with disabilities; and six months of programmatic experience in the group care of children with disabilities; or*

*3. One year of age appropriate, programmatic experience in the group care of children, of which at least six months shall be with children with disabilities.*

~~§ 3-11.~~ *§ 3.16.* Aides.

A. 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.

*B. For therapeutic child development programs and special needs child day programs, all aides shall possess competency-based knowledge and skills specific to the disabilities of the children in care, prior to working with these children.*

~~§ 3-12.~~ *§ 3.17.* Volunteer personnel.

Volunteer personnel shall meet the qualifications for the applicable position *except that volunteer personnel who are parents and are sight supervised when with children and not counted in the staff-to-children ratios only need to meet the health requirements of §§ 2.29 through 2.31*.

~~§ 3-13.~~ *§ 3.18.* Volunteers.

The duties of volunteers shall be clearly defined.

## Article 3. Staff Orientation Training and Development.

~~§ 3-14.~~ *§ 3.19.* 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.

~~§ 3.15.~~ § 3.20. Staff development.

A. The center shall have a *written* 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; and
4. Include annually the topics of safety for children, child development and discipline, and playground supervision for staff.

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 eight hours of staff development activities.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

~~§ 3.16.~~ § 3.21. 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.

§ 3.22. *In addition to the topics required elsewhere in these standards, therapeutic child development and special needs child day staff shall also receive training in:*

1. *Universal precautions procedures;*
2. *Activity adaptations;*
3. *Medication administration and medical procedures;*
4. *Disabilities precautions and health issues; and*
5. *Intervention strategies.*

§ 3.23. *Therapeutic child development staff and special needs child day staff who work directly with children shall annually attend 16 hours of staff development activities. In addition to the requirements of § 3.20 B,*

*staff shall attend at least eight hours of training on topics related to the disabilities of the children in care.*

## PART IV. PHYSICAL PLANT.

### Article 1. Approval from Other Agencies.

#### § 4.1. Requirements prior to initial licensure.

A. Before issuance of initial license 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 or licensee to the licensing representative:

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.

Exception: Any building which is currently approved for school occupancy and which houses a public or private 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 licensure 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 *or assumed* in the building;
4. Signature of the licensed asbestos inspector and management planner, including the Virginia license numbers *and a copy of the asbestos inspector license and management planner license valid at the time of*

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*the inspection* ; 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; *and*
- c. Response actions recommended by the inspector ; ~~and~~ .
- d. ~~Verification that response actions have been completed.~~

Exception: Private, nonprofit schools providing educational instruction to children five years of age or older are also subject to the federal requirements of the Asbestos Hazard Emergency Response Act (AHERA). Private, nonprofit schools which are also subject to licensure and have had an asbestos inspection completed prior to the implementation of these regulations may submit the letter of completion they have received from the Department of Education, in lieu of the requirements of this subsection.

Private, nonprofit schools subject to the federal AHERA requirements, but which have not already received an asbestos inspection must comply with subsections B and C of this section.

C. If asbestos was found *or assumed* in the building, before a license will be issued the prospective licensee shall:

1. Submit to the department 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 *provided by a Virginia licensed asbestos contractor of removal* :
  - a. *Removal, where applicable, at the center for review by the department's representative ; and*
  - b. *Response actions to encapsulate, enclose or repair the asbestos material have been completed, where applicable.*
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 management~~ plan are available for review. A copy of this notification shall be submitted to the department.

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

Exception: 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.

D. Prior to initial licensure, camps shall make the following documentation available to the licensing representative:

1. Notification to closest fire department of 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 licensure.

A. Every 12 months, written documentation shall be obtained and provided to the licensing representative of inspection and approval from the appropriate fire prevention official that the center's facility complies with the Statewide Fire Prevention Code.

Exception: If a center is located in a building currently housing a public or private school during the school year, the school's fire inspection report may be accepted in lieu of the requirements of subsection A of this section if the inspection was completed within the past 12 months.

B. Subsequent to initial licensure, and as required by the local health department, written documentation shall be provided 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 ; and

4. *The administrator shall submit to the department a signed, written statement that the recommendations of the management plan will be followed.*

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 provided by a Virginia licensed asbestos contractor, where applicable, indicating specific locations where asbestos containing material was removed or stating that all asbestos material was removed . Unless all asbestos containing materials have been removed, the operations and maintenance plan shall be followed for any remaining asbestos material.

Exception: 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.

## Article 2. General Requirements.

§ 4.3. 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; and

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

3. Maintained in operable condition.

§ 4.4. Heating provisions.

A. A heating system shall be provided Heat shall be supplied from an approved, central heating system 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. ~~1. Heating shall not be provided by stoves except in camps for school age children;~~
3. ~~2. It shall be installed to prevent accessibility of children to the system; and~~
4. ~~3. 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.~~

Exception: 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 in accordance with the manufacturer's instructions .

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

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

§ 4.6. 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. ~~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 ; .  
and
2. A working, nonpay telephone ; .
3. First aid kit or kits; and
4. Provision for locking medication as described in § 7.16 of these regulations.

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## § 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. Pesticides and insecticides shall not be stored in areas used by children and in areas used for food preparation or storage.

D. Cleaning materials shall not be located above food, food equipment, utensils or single-service articles and shall be stored in areas physically separate from food.

E. Cleaning materials (e.g., detergents, sanitizers and polishes) and insecticides/pesticides shall be stored in areas physically separate from each other.

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

G. 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.

H. Cosmetics, medications, or other harmful agents of staff members shall not be stored in areas, purses or pockets that are accessible to children. *Cosmetics may be accessible to children nine years and older.*

I. Hazardous art and craft material, such as those listed in Appendix III, shall not be used with children.

## § 4.9. Reserved.

§ 4.10. 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.

§ 4.11. 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.

§ 4.12. 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.

§ 4.13. No cooking or heating shall occur in tents.

## Article 3. Indoor Areas.

§ 4.14. There shall be 25 square feet of indoor space available to each child where activities are conducted.

### Exceptions:

1. Centers in operation before November 1, 1993, and newly subject to licensure Centers newly subject to licensure effective July 1, 1993, which were in operation before November 1, 1993, 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. Twenty-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.

§ 4.15. 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.

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

§ 4.17. Smoking shall be prohibited inside the center and outside the center in the presence of the children.

Exception: 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.

§ 4.18. Reserved.

§ 4.19. Reserved.

§ 4.20. *For therapeutic child development programs and special needs child day programs, an area equipped with vinyl-covered floormats shall be available to children who use wheelchairs when activities call for children to be out of their wheelchairs.*

## Article 4. Restroom Areas and Furnishings.

~~§ 4.20.~~ § 4.21. Centers shall have at least two toilets and two sinks.

~~§ 4.21.~~ § 4.22. Each restroom provided for children shall:

1. Be within a confined area;
2. Be accessible and within the building used by the children;

Exception: Restrooms used by school age children at camps do not have to be located within the building.

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.

~~§ 4.22.~~ § 4.23. 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~~ *one toilet is available to boys*.

~~§ 4.23.~~ § 4.24. 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.

Exception: Primitive camps are not required to have a toilet facility with privacy for staff.

~~§ 4.24.~~ § 4.25. 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.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

~~§ 4.25.~~ § 4.26. Reserved.

~~§ 4.26.~~ § 4.27. School age children of the opposite sex shall not use the same restroom at the same time.

~~§ 4.27.~~ § 4.28. In any restroom used for school age children which contains more than one toilet, at least one toilet shall be enclosed for privacy.

~~§ 4.28.~~ § 4.29. 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 ~~§ 4.24~~ § 4.25 of these regulations. No privy or outdoor toilet shall be located within 75 feet of other buildings or camp activities.

~~§ 4.29.~~ § 4.30. 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 § 5.17 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 generated;
4. A covered receptacle for soiled bed linens;
5. Soap and disposable towels; and
6. Privacy for changing diapers of school age children.

## Article 5. Outdoor Areas.

~~§ 4.30.~~ § 4.31. Centers in operation before November 1, 1993, and newly subject to licensure Centers newly subject to licensure effective July 1, 1993, which were in operation before November 1, 1993, may have until July 1, 1996, to meet the requirements of ~~§§ 4.31 through 4.37~~ § 4.38.

~~§ 4.31.~~ § 4.32. The outdoor play area shall provide a minimum of 75 square feet of space per child in the area at any one time.

~~§ 4.32.~~ § 4.33. Playgrounds shall be located and designed in a way to protect children from hazardous situations.

~~§ 4.33.~~ § 4.34. While § 6.35 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 IV.

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Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

~~§ 4.34.~~ § 4.35. Ground supports shall be covered with materials which would protect children from injury.

~~§ 4.35.~~ § 4.36. Equipment used by children shall meet the following requirements :

1. Have no accessible openings between ~~3 1/2 inches and nine inches~~; All bounded openings which allow a 3 1/2 inch by 6 1/4 inch rectangle to fit through shall also allow a nine inch circle to fit through to avoid head entrapment. See Appendix V for additional information.

2. Have closed S-hooks when provided; and

3. Have no protrusions, sharp points, shearing points, or pinch points.

~~§ 4.36.~~ § 4.37. All swing seats shall be made of flexible material except for special swing equipment for a child with a disability. If special swings are made of nonflexible material, precautions shall be taken to keep all other children out of the swing area .

~~§ 4.37.~~ § 4.38. Sandboxes with bottoms which prevent drainage shall be covered when not in use.

~~§ 4.38.~~ § 4.39. Reserved.

~~§ 4.39.~~ § 4.40. Reserved.

## PART V. STAFFING AND SUPERVISION.

### Article 1. Supervision of Staff and Volunteers.

§ 5.1. 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.

§ 5.2. 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.

Exception: In a training environment, aides used beyond the required staff-to-children ratio of § 5.17 shall not be included in the above requirement.

~~§ 5.3. When with children, contract employees shall be sight supervised by a staff member unless the contract employee meets~~ Contract employees working with children shall meet the personnel, health, and orientation training requirements for the applicable position.

### Article 2. Supervision of Children.

§ 5.4. All staff assigned responsibility for supervision of children shall ensure their care, protection, and guidance at all times.

§ 5.5. 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 licensee or designated by the administrator.

§ 5.6. 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.

§ 5.7. 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.

§ 5.8. 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.

§ 5.9. 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 (Note: video equipment, intercom systems, or other technological devices 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 whc

are not staff members or persons allowed to pick up a child in care do not enter 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.

§ 5.10. 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.

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

§ 5.12. Reserved.

### Article 3. Staff-to-Children Ratio Requirements.

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

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

§ 5.15. 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.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 5.16. Reserved.

§ 5.17. The staff-to-children ratio shall be one staff member for every 20 school age children.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 5.18. *For therapeutic child development programs, in each grouping of children, the following ratios of staff to children are required according to the disabilities of the children in care:*

1. *For children with severe and profound disabilities, multiple disabilities, or serious emotional disturbance: one staff member to three children.*

2. *For children diagnosed as trainable mentally retarded (TMR), or with physical and sensory disabilities, or with autism: one staff member to four children.*

3. *For children diagnosed as educable mentally retarded (EMR), or developmentally delayed: one staff member to five children.*

4. *For children diagnosed with attention deficit disorder/hyperactivity disorder (ADD/HD): one staff member to five children.*

5. *Children diagnosed with specific learning disabilities: one staff member to six children.*

6. *When children with varied disabilities are regularly in ongoing groups, the ratios indicated in this section shall be maintained for each level.*

## PART VI.

### PROGRAMS

#### Article 1.

##### Daily Schedule.

§ 6.1. There shall be a predictable sequence to the day but the schedule shall be flexible, based on the children's needs.

§ 6.2. 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.

Exceptions: Outdoor activity is not required on days when an all day field trip occurs and Montessori preschools may meet the alternative requirements in the Montessori Module for subdivision 2 of this section.

§ 6.3. 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.

Exception: The requirements of this section do not apply to specialty camps.

§ 6.4. Reserved.

§ 6.5. Reserved.

§ 6.6. Reserved.

§ 6.7. Reserved.

#### Article 2. Activities.

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§ 6.8. 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.

Exception: Section 6.8 of these regulations is not applicable to ~~speciality~~ *specialty* camps.

§ 6.9. To promote emotional development, the center 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.

§ 6.10. 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.

§ 6.11. 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.

Exception: Subdivisions 1 through 3 of this section are not applicable to ~~speciality~~ *specialty* camps.

§ 6.12. A variety of children's activities shall be provided that allow for group and individual involvement and child and staff initiation.

§ 6.13. 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.

§ 6.14. The center shall provide a balance of active and quiet activities except for ~~speciality~~ *specialty* camps.

§ 6.15. Children of all ages shall be allowed to rest or sleep as needed on cots, mats, or beds, as appropriate.

§ 6.16. 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.

Exceptions: This section is not applicable to ~~speciality~~ *specialty* camps and Montessori preschools may meet the alternative requirements in the Montessori Module.

§ 6.17. Reserved.

§ 6.18. Reserved.

§ 6.19. Reserved.

§ 6.20. Reserved.

§ 6.21. Reserved.

§ 6.22. Reserved.

§ 6.23. Reserved.

§ 6.24. Reserved.

§ 6.25. Reserved.

§ 6.26. Reserved.

§ 6.27. Reserved.

§ 6.28. Reserved.

§ 6.29. Reserved.

§ 6.30. Reserved.

## Article 3. Parental Involvement.

§ 6.31. 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.

§ 6.32. The center shall encourage parental involvement on a volunteer basis in appropriate center activities.

§ 6.33. Staff shall share information with parents about their child's health, development, behavior, adjustment, and needs.

#### Article 4. Equipment and Materials.

§ 6.34. All furnishings, equipment, and materials shall be of a developmentally appropriate size for the child using it.

§ 6.35. 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;

Exception: Subdivision 2 of this section is not applicable to ~~speciality~~ *specialty* camps.

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.

§ 6.36. Indoor slides and climbing equipment shall not be over bare concrete, ~~hardwood floors, masonry, vinyl,~~ tile surface ~~or similar surface~~ *flooring constructed of wood, masonry or vinyl*.

§ 6.37. Storage space for play materials and equipment used by the children shall be accessible to children either independently or with help.

§ 6.38. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

§ 6.39. All disposable products shall be used once and discarded.

§ 6.40. Disposable dishes and utensils shall be sturdy enough to contain food without leakage and to prevent harm and injury to children.

§ 6.41. Provision shall be made for a place for each

child's personal belongings.

§ 6.42. Reserved.

§ 6.43. Reserved.

§ 6.44. Reserved.

§ 6.45. No more than one child at a time shall occupy a cot, rest mat, or bed.

§ 6.46. Cots, rest mats, and beds shall be marked or identified in some way for use by a specific child.

§ 6.47. Double decker cots or beds, or other sleeping equipment ~~which is~~ *when* stacked shall not be used.

§ 6.48. Occupied cots, rest mats, and beds shall be at least 2 1/2 feet from any heat source in use.

§ 6.49. There shall be at least 15 inches of space between sides and ends of occupied cots, beds, and rest mats.

Exception: Fifteen 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.

§ 6.50. If rest mats are used, they shall have comfortable cushioning and be sanitized between each use.

§ 6.51. Reserved.

§ 6.52. Reserved.

§ 6.53. Reserved.

§ 6.54. Reserved.

§ 6.55. Reserved.

§ 6.56. Reserved.

§ 6.57. Reserved.

§ 6.58. 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 pillow cases.

E. Mattresses when used shall be covered with a waterproof material which can be easily sanitized.

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## Article 5. Behavior Guidance.

§ 6.59. 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.

§ 6.60. 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.

§ 6.61. A child shall not be shaken at any time.

§ 6.62. 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.

§ 6.63. 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.

§ 6.64. 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.

§ 6.65. 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.

§ 6.66. Staff shall not give a child authority to punish another child nor shall staff consent to a child punishing

another child.

§ 6.67. Staff shall follow the center's policy on acceptable and unacceptable discipline methods.

§ 6.68. Reserved.

## Article 6. Swimming and Wading Activities.

§ 6.69. Staff and supervision.

A. The staff-child ratios required by § 5.17 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 lifesaver 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.

§ 6.70. 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.

## § 6.71. General.

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.

### Article I. Preventing the Spread of Disease.

§ 7.1. If a child arrives at the center with the signs or symptoms listed in subdivisions 1 and 2 of § 7.3 of these regulations, the child shall not be allowed to attend for that day.

§ 7.2. Staff with training as required in § 3.16 § 3.21 of these regulations shall observe daily each child under eight years of age for signs and symptoms of illness.

§ 7.3. 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. *Recurrent vomiting or diarrhea; or*
2. 3. He has a communicable disease as delineated in the current Communicable Disease Chart recommendations for the exclusion of sick children. (Refer to Appendix V VI.)

§ 7.4. If a child needs to be excluded according to subdivisions 1 and 2 of § 7.3 of these regulations, 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.

§ 7.5. When a child at the center has been exposed to a reportable communicable disease, the parent shall be informed.

§ 7.6. 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.

§ 7.7. 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.

§ 7.8. When a child's clothing or diaper becomes wet or soiled, it shall be changed immediately.

§ 7.9. 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.

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F. Tables used for children's activities or meals shall not be used for changing diapers.

## Article 2. Medication.

§ 7.10. 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.

§ 7.11. 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 VI VII is completed and on file; and
3. Methods to prevent use of outdated medication.

§ 7.12. The medication authorization shall be available to staff during the entire time it is effective.

§ 7.13. 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.

§ 7.14. All medication shall be in the original container with the prescription label or direction label attached.

§ 7.15. 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.

§ 7.16. 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.

§ 7.17. Centers shall keep a log record 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.

§ 7.18. Medication shall be returned to the parent as soon as the medication is no longer being administered.

## Article 3. Specialized Staff Training.

§ 7.19. First aid training.

There shall be at least one staff member *who is trained in first aid* 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 wherever children are in care*. This person shall be available to children and meet one of the following qualifications for first aid training:

1. Has a current first aid 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 *competency based* first aid course *equivalent to the curriculum which has been approved by the State Board of Health which meets the criteria described in Appendix VIII*; or
4. Be a R.N. or L.P.N. with a current license from the Board of Nursing.

§ 7.20. Camps shall have at least one staff member with first aid training, as mentioned in subdivisions 1 through 4 of § 7.19 of these regulations, for every 30 children present.

§ 7.21. CPR training.

*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 and wherever children are in care who has a current cardiopulmonary resuscitation (CPR) certificate. This training shall be appropriate to the age group the center serves and the instructor shall have a current certificate from the certifying agency which indicates that he meets one of the following qualifications:*

1. *Standard First Aid Instructor (American Red Cross);*
2. *CPR Instructor (American Red Cross); or*
3. *CPR Instructor (American Heart Association).*

~~§ 7.21.~~ § 7.22. 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.~~ Camps shall have at least one staff member with cardiopulmonary resuscitation training, as mentioned in § 7.21, for every 30 children present.

~~§ 7.22.~~ § 7.23. 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.

## Article 4. First Aid and Emergency Supplies.

~~§ 7.23.~~ § 7.24. A first aid kit shall be on each floor of each building used by children ~~and~~, on all field trips *and wherever children are in care*.

§ 7.24. § 7.25. The required first aid kits shall include at a minimum:

1. Scissors;
2. Tweezers;
3. Gauze pads;
4. Adhesive tape;
5. Band-aids, assorted types;
6. An antiseptic cleansing solution;
- ~~7. An antibacterial ointment;~~
- ~~8. 7. Thermometer;~~
- ~~9. 8. Two or more triangular bandages;~~
- ~~10. 9. Disposable gloves; and~~
- ~~11. 10. The first aid instructional manual.~~

~~§ 7.25.~~ § 7.26. Each first aid kit shall be stored so that it is not available to children but is easily available to staff.

~~§ 7.26.~~ § 7.27. 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.

## Article 5. Procedures for Emergencies.

~~§ 7.27.~~ § 7.28. 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.

~~§ 7.28.~~ § 7.29. Emergency evacuation procedures shall be posted in a location conspicuous to staff and children on each floor of each building of the center.

~~§ 7.29.~~ § 7.30. The center shall implement these emergency evacuation procedures through monthly practice drills and shall maintain a ~~log~~ record 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.

~~§ 7.30.~~ § 7.31. 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.

~~§ 7.31.~~ § 7.32. The number of a regional poison control center shall be posted in a conspicuous place near each phone.

~~§ 7.32.~~ 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.~~

§ 7.33. 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.

§ 7.34. The center or other appropriate official shall notify the parent immediately if a child is lost, experiences a

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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.

Note: 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.

§ 7.35. The center shall maintain a written ~~log~~ record 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.

§ 7.36. The camp shall have a warning system. Staff and campers shall be trained in this alarm system.

## PART VIII. SPECIAL SERVICES.

### Article 1. Nutrition and Food Services.

§ 8.1. Centers shall serve appropriate snacks or meals, or both, based on the hours of operation and time of the day.

§ 8.2. The center shall ensure that children arriving from a half-day, morning kindergarten program who have not yet eaten lunch receive a lunch.

§ 8.3. ~~There shall be at least 1 1/2 hours between each meal and snack but no more than three hours between meals and snacks. The center shall serve snacks or meals at time intervals of at least one and one-half hours but no more than three hours unless there is a scheduled rest or sleep period for children between the meals and snacks.~~

§ 8.4. Drinking water or other beverage not containing caffeine shall be offered at regular intervals to nonverbal children.

§ 8.5. 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.

§ 8.6. ~~When food is provided by the center~~ When centers choose to provide meals or snacks, 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 ~~VII~~ IX.

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~~ X 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;
- 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.

§ 8.7. When food is brought from home, the following shall apply:

~~1. The food shall not be subject to rapid deterioration or spoilage;~~

2. 1. The center shall give parents the USDA requirements and a list of suggested nonperishable food. Appendix ~~VII~~ IX has the requirements of USDA.

3. 2. The food shall be clearly labeled in a way that identifies the owner;

4. 3. 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. 4. All unused portions of food shall be discarded and not served again.

§ 8.8. If a catering service is used, it shall be approved by the local health department.

§ 8.9. Food during cookouts.

A. All food shall be prepared in a clean and sanitary

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manner.

B. Unused, perishable food shall be discarded and not served again.

§ 8.10. Reserved.

§ 8.11. Reserved.

§ 8.12. Reserved.

§ 8.13. Reserved.

§ 8.14. Reserved.

§ 8.15. Reserved.

§ 8.16. Reserved.

§ 8.17. Reserved.

§ 8.18. Reserved.

§ 8.19. Reserved.

§ 8.20. Reserved.

§ 8.21. Reserved.

§ 8.22. Reserved.

§ 8.23. Reserved.

§ 8.24. *For therapeutic child development programs and special needs child day programs, the consistency of food shall be appropriate to a child's special feeding needs. Necessary and adaptive feeding equipment and feeding techniques shall be used for children with special feeding needs.*

## Article 2. Transportation and Field Trips.

§ 8.24. § 8.25. 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.

§ 8.25. § 8.26. 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~~ *locks manufactured for the purpose of transporting human beings seated in an enclosed area*

2. The vehicle's seats shall be attached to the floor;

3. The vehicle shall be insured with at least the minimum limits set *established* 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 ; and

5. *If volunteers supply personal vehicles, the center is responsible for ascertaining that subdivisions 1 through 4 of this section are met.*

§ 8.26. § 8.27. 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 *unless locks were not installed by the manufacturer of the vehicle* ;

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 §§ 7.30 §§ 7.31 and ~~7.31~~ 7.32 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.

§ 8.27. § 8.28. 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.

§ 8.28. § 8.29. 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.

§ 8.29. § 8.30. The staff-to-children ratio of § 5.17 of these regulations shall be followed on all field trips but not necessarily in each vehicle. The staff-to-children ratio may not be followed during transportation of children to and from the center.

Exception: Montessori preschools may meet the alternative requirements in the Montessori Module.

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~~§ 8.30.~~ § 8.31. At least one staff member on field trips shall be trained in first aid according to subdivisions 1 through 4 of § 7.19 of these regulations and shall be instructed on procedures to follow if there is a vehicle break down.

~~§ 8.31.~~ § 8.32. A first aid kit with the supplies mentioned in subdivisions 1 through ~~11~~ 10 of ~~§ 7.24~~ § 7.25 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.

~~§ 8.32.~~ § 8.33. The center shall make provisions for providing children on field trips with adequate food and water.

~~§ 8.33.~~ § 8.34. If perishable food is taken on field trips, the food shall be stored in insulated containers with ice packs to keep the food cold.

~~§ 8.34.~~ § 8.35. Before leaving on a field trip, a schedule of the trip's events and locations shall be posted and visible at the center site.

~~§ 8.35.~~ § 8.36. 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 trip.

~~§ 8.36.~~ The center shall develop and implement procedures to assure that all children return to the facility after a field trip.

§ 8.37. Staff shall follow the center's transportation safety policy.

§ 8.38. 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.

§ 8.39. *For therapeutic recreation programs and special needs child day programs providing transportation, nonambulatory children shall be transported in a vehicle which is equipped with a ramp or hydraulic lift to allow entry and exit.*

*Wheelchairs shall be equipped with seat belts and shall be securely fastened to the floor when used to seat children in a vehicle.*

*Arrangements of wheelchairs in a vehicle shall not impede access to exits.*

§ 8.40. *For therapeutic child development programs and*

*special needs child day programs, when the center is responsible for providing transportation, the center shall develop a plan based on the needs of the children in care to assure their safe supervision during on-loading, off-loading and transporting and when 16 or more children are being transported, there shall be at least one adult besides the driver, for each group of 16.*

§ 8.41. *For therapeutic child development programs and special needs child day programs, if a child has a known seizure disorder or neurological, genetic or physiological disability causing increased medical risk and that child is being transported, one adult who is not the driver and who is trained in CPR shall be present in the vehicle.*

## Article 3. Animals and Pets.

~~§ 8.39.~~ § 8.42. 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.

~~§ 8.40.~~ § 8.43. 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.

~~§ 8.41.~~ § 8.44. 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.

~~§ 8.42.~~ § 8.45. 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.

## Article 4. Evening and Overnight Care.

~~§ 8.43.~~ § 8.46. 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. Exception: Camps, providing evening or overnight care to school age children on an occasional basis, are not required to meet the requirements of subsection A of this section 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.

Exception: Camps, providing evening or overnight care to school age children on an occasional basis, are not required to meet the requirements of subsection B of this section 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 subsections A through E of § 6.58 of these regulations about linens, 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, §§ 6.45 through 6.49 of these regulations about rest furnishings shall also apply to the use of sleeping bags.

G. Camps may use bunk beds if children are at least eight years of age.

§ 8-44. § 8.47. In centers providing overnight care, an operational tub or shower with heated and cold water shall be provided.

Exception: Primitive camps are not required to have a tub or shower.

§ 8-45. § 8.48. When bath towels are used, they shall be assigned for individual use.

§ 8-46. § 8.49. Activities.

A. Activities for children in evening or overnight care shall include, as time allows, age-appropriate activities as described in subdivisions 1 through 6 of § 6.16 of these regulations.

B. Quiet activities and experiences shall be available immediately before bedtime.

§ 8-47. § 8.50. For children receiving evening and overnight care, the provider shall offer a regularly scheduled evening meal and snack.

## PART IX. MONTESSORI MODULE.

### Article 1. Qualifications of a Montessori Preschool.

§ 9.1. Montessori preschools are educational programs wherein the teacher training and subsequent pedagogy are approved by either American Montessori Society, ~~American Association~~ 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. Meeting these Montessori standards shall afford the Montessori preschool 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.

§ 9.3. 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.

### Article 2. Specific Alternatives for Qualifying Montessori Preschools.

#### § 9.4. Administrators.

The administrator of a Montessori preschool 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 Association~~ 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 preschool 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

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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 Association~~ 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 preschool shall:

1. Be at least 21 years of age, and

2. Hold a teaching diploma recognized by American Montessori Society, ~~American Association~~ 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 preschool 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 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. The facilities of a Montessori preschool, 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. The Montessori materials at a Montessori preschool 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. A Montessori preschool shall have restrooms that are easily accessible with a ratio of one toilet and one sink for every 20 children.

§ 9.11. A Montessori preschool shall have a safe outdoor play area which allows for exploration of nature and provides a resilient surface in fall zones.

§ 9.12. A Montessori preschool shall maintain a balanced multi-age grouping, with a ratio of one staff member for every 15 children.

§ 9.13. Teachers at a Montessori preschool 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. A Montessori preschool 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. A Montessori preschool 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. In a Montessori preschool 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. A Montessori preschool shall abide by the pedagogy and curriculum guidelines in the Montessori Module.

§ 9.18. 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 shall be no more than one to 20.

## Article 3.

### Montessori Preschool Standards.

## § 9.19. Hours and scope of operation.

A. A Montessori preschool 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 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.

## § 9.20. 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 preschool shall maintain a safe Montessori environment for the class.

C. Teachers at a Montessori preschool 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 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 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 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 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 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 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 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, 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 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 preschool 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 shall have continuous access to these materials as deemed appropriate by the Montessori teacher.

C. These materials at a Montessori preschool 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 preschool shall be presented by the Montessori teacher in accordance with the Montessori curriculum standards as included herein.

§ 9.22. Curriculum guidelines, including appropriate materials for children from two years to six years, as stated below, shall be followed in a Montessori preschool.

These requirements are based on guidelines used by American Montessori Society, *American Association*

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Montessori Internationale, National Council of Montessori Education, and Saint Nicholas Montessori teacher training.

## PRACTICAL LIFE

Preliminary Exercises	Purpose
Spooning; Pouring rice; Pouring water Age: 2 1/2 - 3 1/2	To teach the child muscular control, care, exactness, how to pour.
Napkin folding Age: 2 1/2 - 4	Purpose To teach muscular control, exactness. Indirect preparation for geometry.
Care of the Environment Table washing; Dusting; Polishing wood; Polishing metal; Arranging flowers; Sweeping Age: 2 1/2 - 4 and up	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.
Care of the Person Pressing frames; Polishing shoes; Washing hands Age: 2 1/2 - 4 and up	Purpose To teach the child to care for himself, to take pride in his person, to gain independence and self-worth
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. Age: 2 1/2 and up	Purpose To help the child develop understanding or rules of grace and courtesy, to adapt and be accepted into a social group.
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 games, respect silence, etc. Age: 2 1/2 and up	Purpose To learn control of movement, self awareness of ones self, purposeful activity order, respect for persons and property, attention to details, and environment.

Visual Discrimination	Purpose
Pink Tower Broad Stair Long Stair Solid Cylinders Color tablets Geometric Cabinet Biology Cabinet Binomial & trinomial cube Constructive triangles Super imposed geometric figures Knobless Cylinders Solid Geometric shapes Mystery bag Progressive Exercises Age: Progressive from 2 1/2 to 4 1/4 +	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.

Auditory discrimination	Purpose
Sound boxes, Bells, Listening exercises Age: 2 1/2 and up	Training of auditory sense, discrimination of sounds, development of listening skills, discrimination of tones.

Tactile Sense	Purpose
Rough and smooth boards, Rough and smooth tablets, Fabrics Age: 2 1/2 - 3 1/2	Development of tactile sense, control of muscular action and lightness touch. Indirect preparation for writing.

Baric, Thermic, Olfactory Senses	Purpose
Baric tablet, Thermic bottles, Scent boxes, and bottles Age: 2 1/2 and 3 1/2	Further develop senses. Help one to be aware of one's environment.

## LANGUAGE

Oral Vocabulary	Purpose
Enrichment of vocabulary; Language training Age: 0 and up	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.

Writing	Purpose
Sand paper letters (sound game); Moveable Alphabet; Metal Insets; Perfection of writing Age: Progressive 2 1/2 - 4	To make the child award 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.

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Reading	Purpose	Processes of Addition, Subtraction, Multiplication, division	picture of the workings of the decimal system and all its processes.
Phonetic object game; Phonograms; Puzzle/ Secret words	To give facility to phonetic reading. To give the keys to further reading and exploration of language.	Age: 4 1/2 to 5 1/2 +	
Age: 4 1/2 - 5		Further Exercises in Math	Purpose
Reading Classification	Purpose	Linear and skip counting	To give the child opportunity for further exploration with numbers, the opportunity for repetition and perfection in executing the processes in math.
Social cards, cultural cards; Definition booklets; Labels for environment, etc.	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.	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	The opportunity to commit to memory the math facts. Steps to total abstraction.
Age: 4 1/2 on		Age: 5 - 6 1/2 and up	
Function of Words	Purpose	GEOGRAPHY	Purpose
Article; Adjective Logical Adjective game; Conjunction, Preposition, Verb, Adverb, Commands	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.	Sandpaper globe; Land and water forms; Painted globe; Puzzle maps; Pictures; Definition cards; Stories; Simple reference books	To introduce the child to the concepts of physical political, economic geography, interdependence of man and related language.
Age: 4 1/2 - 5		Age: 2 1/2 +	
Reading Analysis	Purpose	HISTORY	Purpose
Simple sentence (first stage, second stage and extensions, attributes, and appositives)	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.	Artifacts, Pictures Definition cards, Simple reference books, Stories	To introduce the child to world cultures, physical and spiritual needs of man throughout history, famous persons, holidays, etc.
Age: 5 1/2 and up		Age: 2 1/2 +	
Work Study - To allow the child to explore words on a more advanced level.		MUSIC	Purpose
Punctuation - To help the child communicate more effectively in his written work.		Songs, records, tapes, Rhythm and movement, Tone bells, Tone charts Composers/famous music	To give the child a variety of musical experiences, including pitch, tone, rhythm, movement, auditory comparisons, related symbols and language.
Reading & Writing of Music	Purpose	Age: 2 1/2 +	
Green boards with notes; Green manuscript board; White music charts; Summary exercises; Learning songs; Musical instruments; etc.	To recognize and create the language of musical composition through notation and lyrics.	CREATIVITY	Purpose
Age: 4 1/2 and up		Appropriate media, Pictures, Stories, Reference books, Practical life, Sensorial lessons	To introduce the child to concepts of color, tone, light, form, history and art appreciation; and, afford the child appropriate opportunities for self expression.
MATHEMATICS		Age: 3 +	
Numbers (1 to 10)	Purpose	BOTANY/BIOLOGY	Purpose
Number rods; Sandpaper numbers; Number rods and cards; Spindle boxes; Cards and counters; Memory game	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 addition math.	Botany leaf cabinet, Plants, Pictures/ plants and animals, Definition cards, Classifications materials, Stories, Simple reference books, Opportunities to explore nature	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: 4		Age: 2 1/2 +	
Decimal system (Golden Bead Exercises)	Purpose		
Introduction of beads Introduction of cards Cards and beads together	To teach the concepts of the decimal system through 1000s. To give the child the overall		

\* All work in the areas of science, history, culture, music,

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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.

**NOTICE:** The appendices and forms used in administering the Minimum Standards for Licensed Child Day Centers Serving School Age Children regulations are not being published due to the large number; however, the name of each appendix and form is listed below and are available for public inspection at the Department of Social Services, 730 E. Broad Street, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, 910 Capitol Street, Richmond, Virginia 23219.

Licensing Information for Parents About Child Day Programs, Appendix I (7/93)

School Entrance Physical Examination and Immunization Certification, Appendix II

Art Materials: Recommendations for Children Under 12, Appendix III

Information from Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Appendix IV

Head Entrapment, Information from Handbook for Public Playground Safety, U.S. Consumer Product Safety Commission, Appendix V

Communicable Disease Reference Chart for School Personnel, Appendix VI

Medication Authorization, Appendix VII

First Aid Training, Appendix VIII

Child Care Food Program Meal Patterns, Appendix IX

Some Foods with Vitamin A and Vitamin C, Appendix X

Initial Application for a License to Operate a Child Day Center (032-05-512/10, 6/94)

Renewal Application for a License to Operate a Child Day Center (032-05-225/9, 6/94)

VA.R. Doc. No. R93-1172; Filed August 3, 1994, 11:56 a.m.



## DEPARTMENT OF HEALTH (STATE BOARD OF)

**REGISTRAR'S NOTICE:** The following regulation is exempt from the normal procedures of the Administrative Process Act pursuant to § 32.1-164.5 D of the Code of Virginia, which requires the State Board of Health to adopt, as final, proposed regulations that were the subject of public notice and for which one or more public hearings or informational meetings were held in accordance with the Administrative Process Act after July 1, 1993, and prior to September 30, 1994. Prior to final adoption, the State Board of Health is proposing this regulation for an additional 11-day comment period.

Due to its length, the full text of the proposed regulation filed by the Department of Health is not 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 office of the Registrar of Regulations and at the Department of Health. Copies of the regulation may be obtained from C. M. Sawyer, Department of Health, Division of Wastewater Engineering, P. O. Box 2448, Richmond, Virginia 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

**Title of Regulation:** VR 355-17-200. Biosolids Use Regulations.

**Statutory Authority:** § 32.1-164.5 of the Code of Virginia.

**Public Hearing Date:** N/A – Written comments may be submitted through September 2, 1994.  
(See Calendar of Events section for additional information)

**Basis:** Sections 32.1-164 et seq. of the Code of Virginia authorizes the State Board of Health to promulgate regulations to govern the Safe and Sanitary Collection, Transportation, Treatment and Disposal of Sewage for all sewerage systems. Section 32.1-164.5 of the Code of Virginia authorizes the State Board of Health to promulgate regulations for the land application, marketing or distribution of sewage sludge. The proposed Biosolids Use Regulations are based on § 32.1-164.5 of the Code of Virginia.

**Purpose:** The Biosolids Use Regulations were developed in response to HB1067 (1994), which added §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia pertaining to standards and permits required for land application, marketing, or distribution of sewage sludge. The new regulations will replace applicable sections of the existing Sewerage Regulations (VR 355-17-01) jointly adopted by the State Water Control Board and the State Board of Health in 1977 and currently utilized within the procedures for

issuance of Virginia Pollution Abatement (VPA) Permits by the Department of Environmental Quality (DEQ). The new regulations update and revise the technical standards contained in the previous regulations and provide for issuance of Virginia Department of Health (VDH) construction and operation permits by the State Health Commissioner. The Biosolids Use Regulations will provide for the replacement of VPA permits with VDH permits issued to sludge management contractors, who land apply, distribute, or market treated sewage sludge of acceptable quality (biosolids). The VDH permits will regulate such operations with site specific management practice standards.

Regulated agricultural utilization of stabilized sewage sludge of known quality (biosolids) is a viable, safe and effective method of sludge management when properly managed. Public opposition to land application projects normally stems from health related issues, aesthetic concerns and sociopolitical issues. Implementation of such projects are often opposed due to a perceived lack of regulatory control including absence of routine surveillance of the transportation and the application of biosolids to field areas. Also, concern about the location of application projects together with political jurisdictional disputes, can overwhelm the technical issues and result in controversy over the issuance of permits unless site specific management controls are provided.

The proposed Biosolids Use Regulations establish the procedures and standards by which the VDH would permit sludge management contractors for land application of biosolids and for the distribution and marketing of biosolids in accordance with § 32.1-164.5 of the Code of Virginia. Such permits issued through regulations that provide site specific management controls, as well as technical standards for sludge treatment and use, ensure that sludge contaminants will not exceed human health and environmental criterion established for such usage. Local governments would be assured that the use of biosolids could be properly regulated upon implementation of the Biosolids Use Regulations.

Substance: The proposed regulations have a lengthy history. The regulations were initially developed through the project streamline initiative study of state permitting requirements in 1990. During the study, the role of the VDH in the regulation of sewerage systems was evaluated. In addition, alternatives to the existing State Water Control Board and State Board of Health joint 1977 Sewerage Regulations and the proposed 1986 revisions to those regulations were also evaluated. These regulations provided the standards for state oversight to ensure that sewerage collection, treatment and sludge management systems would be adequately designed, constructed and operated to prevent the spread of disease resulting from sewage pollution of state waters. The project streamline study concluded that an efficient and impartial regulatory oversight of the construction and operation of sewerage and sludge management systems was necessary and could be provided by VDH through the engineering staff. In

1990, it was proposed that technical standards, as updated in the proposed 1986 revisions to the 1977 Sewerage Regulations (developed through public participation and hearing procedures) should be incorporated into a new set of regulations to be adopted solely by the State Board of Health. These new regulations were entitled the Sewage Collection and Treatment (SCAT) Regulations.

Four public meetings were noticed and held across the state to receive public input on the proposed SCAT Regulations at the following locations on the indicated dates:

1. Abingdon - July 20, 1993
2. Roanoke - July 21, 1993
3. Spotsylvania County - July 22, 1993
4. Williamsburg - July 23, 1993

The need for uniform statewide standards was identified and supported at each meeting. The need to simplify the procedures for permit issuance was also noted at several of these meetings. The majority of comments received at these meetings concerned the regulation of sludge use (biosolids). Several commentors requested that the biosolids standards included in the SCAT Regulations be revised to conform more closely with the recently promulgated federal standards contained in the new EPA regulation on sludge use and disposal (CFR40, Part 503). Comments presented verbally and in writing prior to, during and following the public meetings were utilized to revise the proposed SCAT Regulations accordingly.

Revisions made to the Administrative Process Act by the 1993 General Assembly required that the promulgation process already underway for the SCAT's Regulations be abandoned and reinitiated following July 1, 1993.

To ensure an expeditious adoption and implementation of VDH Regulations for Biosolids Use, the approved HB1067 (Chapter 288) provided for an exemption to the public participation requirements of the Administrative Process Act (APA). The APA exemption stated that the Board of Health could adopt, as final, proposed regulations that were the subject of public notice and for which one or more public informational meetings were held in accordance with the APA, after July 1, 1993, and prior to September 30, 1994. The Attorney General's staff have concluded that these regulations as presented result from the public hearings held on the proposed SCAT Regulations and may be brought to the board for final adoption in accordance with HB1067 (1994).

Revisions to the biosolids standards were coordinated with the Department of Environmental Quality and the Department of Conservation and Recreation as well as the following committees:

1. The inter-agency committee on Land Application of

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Sewage Sludge (LASS).

2. The Virginia Water Environment Association's Residuals Management Committee (RMC).

The proposed Biosolids Use Regulations presented are essentially a compilation of certain sections previously contained in the proposed SCAT Regulation and thoroughly discussed with a number of the contributors and commentaries to the proposed SCAT Regulations. Any additional input as a result of this notice will be considered prior to final adoption of the proposed Biosolids Use Regulations.

Evaluation: The Biosolids Use Regulations provide for a regulations advisory committee consisting of appropriate representatives of the concerned regulated community including owners and operators of biosolids use facilities, public interests, other state agencies and academic experts as appointed by the State Health Commissioner. The advisory committee will meet semi-annually or more frequently as necessary to consider and evaluate recommendations for the implementation of or revision to, the Biosolids Use Regulations and related policies concerning biosolids use.

Issues: Local governments including rural counties and urban municipalities have requested that the state provide a strongly regulated permit program for agricultural use of biosolids on specific sites identified within the various political jurisdictions. All land application operations for use of biosolids located in Virginia have been required to operate under site specific conditions through approved sludge management plans that have been made a condition of approval for permits to operate such facilities. The technical oversight provided by VDH has ensured that health protection is addressed in these management plans. The technical merits of such permit applications have been presented to local governments and concerned citizens through public meetings arranged to discuss these issues, as required by § 32.1-164.2 of the Code of Virginia.

The majority of site specific permits are issued to those private companies that are land applying sludge under contract to municipalities. These contractors are currently issued a Virginia Pollution Abatement (VPA) Permit by the DEQ. In order to receive a VPA permit these contractors must obtain VDH approval of an operation plan describing the required site management controls that will be implemented.

New federal standards for sludge management have been promulgated by USEPA as CFR40, Part 503 Regulations. These federal regulations include Numerical Standards for Sludge Quality as established by Environmental Health Risk Assessments for various Management Options and receptor exposure pathways. The federal regulations apply to municipal sewage treatment works and are to be incorporated into the VPDES permit system by the DEQ. However, the federal standards do not address site specific management controls for agricultural use of biosolids and

do not provide for the permitting of sludge management contractors.

Upon incorporation of the new federal regulations (CFR40, Part 503) into the VPDES permit program, VPA permits may no longer be issued to sludge management contractors. These private companies could sustain a financial loss as well as a loss of credibility with local governments if they do not receive site specific permits demonstrating compliance with state regulations. The approved HB1067 (1994) directs the State Board of Health to provide for such permit issuance in accordance with § 32.1-164.5 of the Code of Virginia. The provisions of this statute call for specific requirements to be adopted by the State Board of Health for the regulation of land application, marketing or distribution of biosolids. The proposed Biosolids Use Regulations would comply with the legislative mandate. Implementation of the Biosolids Use Regulations prior to any revisions to DEQ permit regulations will prevent any possible disenfranchisement of sludge management contractors.

These new regulations and procedures will facilitate a more expeditious evaluation and approval of permits issued to sludge management contractors and treatment works now serving approximately 70% of the state's population. The proposed regulations will outline current standards of practice and the technical design standards and operational requirements to ensure that new or upgraded biosolids use facilities provide the capacity and/or performance reliability necessary to comply with permit requirements.

Permit noncompliance resulting from system operational failures can result in costly enforcement actions and the improper and unregulated disposal of sewage and sewage sludge. Discharge of improperly treated and unacceptable quality sewage sludge could result in pollution of surface and groundwater, contamination of soil and exposure of the public to infectious agents. The proposed regulations administered by VDH will ensure that public health is not endangered and that environmental resources are properly managed.

Estimated Impact: The VDH staff within the Division of Wastewater Engineering (DWE) (six graduate engineers with an annual budget of \$400,000) will implement the proposed regulations when adopted by the Board of Health. Approximately 20,000 to 25,000 acres would be permitted annually for agricultural use of nearly one million gallons per day of biosolids (applied on various sites in the state for about 300 days each year). The site specific permits will not be issued until concerned agencies and the public have been given an opportunity to comment on their concerns. The current system for notification of permit applications to local government and the scheduling of public meetings would continue virtually unchanged. Also, current procedures for requesting and receiving input from the Virginia Department of Agriculture and Consumer Services and the Division of Soil and Water Conservation in the Department of Conservation

and Recreation will be included in the proposed regulations. In addition, the new interaction between VDH, DWE and the Water Division of DEQ will be established by the proposed regulations. All relevant concerns would be considered to establish permit requirements as provided through the proposed Biosolids Use Regulations.

The approved HB1067 also authorized the Board of Health to adopt regulations prescribing a reasonable fee not to exceed \$2,500 to be charged for the direct and indirect costs associated with the processing of an application to issue, reissue, amend or modify any permit issued by VDH, to land apply, distribute, or market sewage sludge. It is anticipated that future Biosolids Permit Fee Regulations will contain a schedule of permit fees related to the land area included in the permit issued. Each contractor would receive a permit for sites located within a political jurisdiction (county). The permit would require a major modification for permitting additional acreage with a limit of 2,500 acres per modification. Each new or modified permit would be reissued for available sites once every five years. Based on current land application permitting patterns, the proposed biosolids use permit fees could generate an average annual revenue total of \$50,000. The annual cost passed on to treatment works owners now contracting out biosolids use would be less than one dollar per dry ton of biosolids produced. For example, the operational costs of treatment works with a design flow capacity of 10 million gallons per day could increase up to approximately \$2,000 annually as a result of fees assessed to their contractors for biosolids use permits.

The proposed Biosolids Use Regulations will require technical evaluation and approval of proposals, reports, plans and specifications submitted as applications in support of permits to construct and operate biosolids use facilities. However, the VDH program will ensure that technical assistance is provided to owners and their consultants to develop the most cost effective technology that can be reasonably operated to provide reliable performance in compliance with permit requirements. The VDH Environmental Engineering staff will negotiate an acceptable design or plan through coordination with other state agencies and local government. During this process, small communities will receive the benefits of the statewide technical expertise. In addition, issuance of a VDH biosolids use permit will provide assurance that proper site specific management practices are followed.

An alternative to adoption of the Biosolids Use Regulations would be no state program. In that environment, the USEPA would implement the federal standards and the generator would not be required to obtain site specific permits. However, nonuniform and possibly overly restrictive local ordinances would likely be developed. Implementation of local standards would place additional financial burdens on rural communities. In addition, the treatment works owners, largely urban communities, would experience significant increases in user charges if biosolids use management options are replaced with disposal options, such as sludge incineration.

The existing joint 1977 Sewerage Regulations promulgated by the State Water Control Board and the State Board of Health will remain in effect until superceded by new regulations adopted by either board as appropriate (Chapter 194 of the 1991 Acts of the General Assembly). Implementation of the proposed Biosolids Use Regulations will provide owners, operators, contractors and local government with updated, uniform standards for site specific management practices, in order to address public concerns at a reasonable cost.

The proposed Biosolids Use Regulations have therefore been developed to clarify the current process utilized to evaluate technology and issue permits that will provide assurance to local governments that land application, marketing or distribution of biosolids is properly regulated.

Implementation of the proposed Biosolids Use Regulations will provide a cost effective way to reuse a waste product with minimal financial impact on the owners of biosolids use facilities, including most local governments throughout the state. Contractors for those owners will also benefit from the implementation of more credible procedures for issuance of permits as provided by the proposed regulations.

#### Summary:

*The Biosolids Use Regulations were developed in response to HB1067 (1994), which added §§ 32.1-164.5 and 62.1-44.19:3 of the Code of Virginia pertaining to standards and permits required for land application, marketing, or distribution of sewage sludge. The new regulations will replace applicable sections of the existing Sewerage Regulations (VR 355-17-01) jointly adopted by the State Water Control Board and the State Board of Health in 1977 and currently utilized within the procedures for issuance of Virginia Pollution Abatement (VPA) Permits by the Department of Environmental Quality (DEQ). The new regulations update and revise the technical standards contained in the previous regulations and provide for issuance of Virginia Department of Health (VDH) construction and operation permits by the State Health Commissioner. The Biosolids Use Regulations will provide for the replacement of VPA permits with VDH permits issued to Sludge Management Contractors, who land apply, distribute, or market treated sewage sludge of acceptable quality (biosolids). The VDH permits will regulate such operations with site specific management practice standards.*

*The proposed Biosolids Use Regulations are essentially a compilation of certain sections previously contained in the proposed Sewage Collection and Treatment (SCAT) Regulations and thoroughly discussed with a number of the contributors and commentaries to the proposed SCAT Regulations. The SCAT Regulations have a lengthy history of development beginning with the proposed 1986 revisions to the existing Sewerage Regulations, up to the 1990 project streamline study*

# Proposed Regulations

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of state permitting requirements. During that period of development, a number of public informational meetings have been held across the state to receive comments on the proposed regulations. Four public meetings were noticed and held at different locations throughout the state during July, 1993. The proposed SCAT Regulations were revised in accordance with the comments received from the prior public participation efforts. However, revisions to the Administrative Process Act (APA) approved by the 1993 session of the General Assembly required that additional public meetings would be necessary prior to adoption of the SCAT Regulations.

The 1994 session of the General Assembly passed HB1067 requiring the issuance of permits for land application, marketing or distribution of sewage sludge (biosolids use). The approved HB1067 (1994) directs the State Board of Health to provide for such permit issuance in accordance with § 32.1-164.5 of the Code of Virginia. The provisions of this statute call for specific requirements to be adopted by the State Board of Health for the regulation of land application, marketing or distribution of biosolids. The proposed Biosolids Use Regulations were subsequently developed from the proposed SCAT Regulations to comply with the legislative mandate to adopt regulations by October 1, 1994. Implementation of the Biosolids Use Regulations prior to any revisions to DEQ permit regulations should prevent any possible disenfranchisement of sludge management contractors as permitted entities.

To ensure an expeditious adoption and implementation of VDH Regulations for Biosolids Use, the approved HB1067 (Chapter 288 of the 1994 acts of the General Assembly) provided for an exemption to the public participation requirements of the Administrative Process Act (APA). The APA exemption stated that the Board of Health could adopt, as final, proposed regulations that were the subject of public notice and for which one or more public informational meetings were held in accordance with the APA, after July 1, 1993, and prior to September 30, 1994. The Attorney General's staff have concluded that the proposed Biosolids Use Regulations, developed from the public participation input received on the proposed SCAT Regulations, may be brought to the State Board of Health for final adoption in accordance with the approved HB1067. While the Board of Health is authorized to adopt the proposed Biosolids Use Regulations, an abbreviated and final opportunity for public comment is being provided. Comments may be forwarded to VDH through September 2, 1994. All relevant concerns will be considered for inclusion in the final regulations to be presented for adoption at the State Board of Health meeting on September 9, 1994.

V.A.R. Doc. No. R94-1130; Filed July 20, 1994, 11:16 a.m.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

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

The State Council of Higher Education for Virginia has **WITHDRAWN** the proposed regulation entitled, "VR 380-04-01, Tuition Relief, Refund, and Reinstatement Guidelines," that was published in 7:21 V.A.R. 3131-3132 July 15, 1991.

V.A.R. Doc. No. R94-1162; Filed July 27, 1994, 2:52 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

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

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

**Public Hearing Date:** N/A – Written comments may be submitted through October 21, 1994  
(See Calendar of Events section for additional information)

**Basis and Authority:** Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services (BMAS) the authority to administer and amend the Plan for Medical Assistance. The Code also provides in § 9-6.14:9.1 of the Administrative Process Act for this agency's promulgation of proposed regulations subject to the Governor's review.

The Code of Federal Regulations (CFR) Title 42 Part 447 allows DMAS to establish reimbursement methodologies for Medicaid-funded services. The CFR Title 42 Part 441 allows federal financial payment for expenditures for services furnished in connection with organ transplant procedures.

**Purpose:** The purpose of this proposal is to amend the State Plan to clarify the requirements and process for determining the level of reimbursement available for covered transplant services.

**Summary and Analysis:** The section of the State Plan affected by this action is the Narrative for the Amount, Duration, and Scope of Services, Supplement 1, Attachment 3.1 A & B.

As a result of court action in which the Department of Medical Assistance Services (DMAS) was required to reimburse providers for covered transplantation services, DMAS developed the current State Plan amendment. At that time, emergency (and subsequently final) regulations

# Proposed Regulations

were promulgated which stated that reimbursement for covered transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational would be based upon a rate negotiated with providers on an individual case basis, or a flat rate by procedure, or by procedure and facility.

This proposed regulation is intended to describe more specifically the reimbursement process that has been in effect since the promulgation of the current regulation. In summary, reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures shall be a fee based upon the greater of a prospectively determined, procedure-specific, flat fee determined by the agency, or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover all procurement costs, hospital costs, and physician costs, including such physicians as radiologists, pathologists, oncologists, surgeons, etc., but will not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation.

In addition, reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for procedures performed in-state.

Issues: The agency projects no negative issues involved in implementing this proposed amendment. As this regulation clarifies existing reimbursement language, rather than revises the methodology itself, affected providers will not be negatively affected by this amendment. For DMAS, this regulation provides more detail about how the reimbursement is calculated.

Impact: This proposed amendment effects no new reimbursement methodology changes. Moreover, DMAS expects no increase in service utilization as a result of this change. No fiscal impact is attached to this amendment. Additional staff are not required to implement this amendment. Expenditure data is not available for organ transplant services because they are not gathered in a separate category but merged into inpatient hospital services and physician services.

Providers affected by this regulation are hospitals that provide transplantation services (specifically, 10 facilities located in the Commonwealth and in the District of Columbia) and the recipients affected are those who require covered transplantation services. Since the change made is to document reimbursement practices already in effect, there are no negative effects to either providers or recipients. There are no localities which are uniquely affected by these regulations as they apply statewide.

## Summary:

*The purpose of this proposal is to amend the State Plan to clarify the requirements and process for*

*determining the level of reimbursement available for covered transplant services.*

*The section of the State Plan affected by this action is the Narrative for the Amount, Duration, and Scope of Services, Supplement 1, Attachment 3.1 A & B.*

*As a result of court action in which the Department of Medical Assistance Services (DMAS) was required to reimburse providers for covered transplantation services, DMAS developed the current State Plan amendment. At that time, emergency (and subsequently final) regulations were promulgated which stated that reimbursement for covered transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational would be based upon a rate negotiated with providers on an individual case basis, or a flat rate by procedure, or by procedure and facility.*

*This proposed regulation is intended to describe more specifically the reimbursement process that has been in effect since the promulgation of the current regulation. In summary, reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures shall be a fee based upon the greater of a prospectively determined, procedure-specific, flat fee determined by the agency, or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover all procurement costs, hospital costs, and physician costs, including such physicians as radiologists, pathologists, oncologists, surgeons, etc., but will not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation.*

*In addition, reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for procedures performed in-state.*

*The agency projects no negative issues involved in implementing this proposed amendment. As this regulation clarifies existing reimbursement language, rather than revises the methodology itself, affected providers will not be negatively affected by this amendment. For DMAS, this regulation provides more detail about how the reimbursement is calculated.*

*This proposed amendment effects no new reimbursement methodology changes. Moreover, DMAS expects no increase in service utilization as a result of this change. No fiscal impact is attached to this amendment. Additional staff are not required to implement this amendment. Expenditure data is not available for organ transplant services because they are not gathered in a separate category but merged into inpatient hospital services and physician services.*

# Proposed Regulations

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*Providers affected by this regulation are hospitals that provide transplantation services and the recipients affected are those who require covered transplantation services. Since the change made is to document reimbursement practices already in effect, there are no negative effects to either providers or recipients. There are no localities which are uniquely affected by these regulations as they apply statewide.*

VR 460-03-3.1100. Narrative for the 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. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational 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. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon a rate negotiated with providers on an individual case basis, or a flat rate by procedure, or by procedure and facility, the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

J. The department may exempt portions or all of the utilization review documentation requirements of subsections A, D, E, F as it pertains to recipients under age 21, G, or H in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements.

K. Hospitals qualifying for an exemption of all documentation requirements except as described in subsection J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pended claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals:

1. The department shall conduct periodic on-site post-payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.
2. The hospital shall make all medical records of which medical reviews will be necessary available

upon request, and shall provide an appropriate place for the department's auditors to conduct such review.

3. The qualifying hospital will immediately refund to the department in accordance with § 32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.

4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.

5. The department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.

## § 2. Outpatient hospital and rural health clinic services.

### 2a. Outpatient hospital services.

A. Outpatient hospital services means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that:

1. Are furnished to outpatients;
2. Except in the case of nurse-midwife services, as specified in § 440.165, are furnished by or under the direction of a physician or dentist; and
3. Are furnished by an institution that:
  - a. Is licensed or formally approved as a hospital by an officially designated authority for state standard-setting; and
  - b. Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare.

B. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment of health or life to the mother if the fetus were carried to term.

C. Reimbursement will not be provided for outpatient hospital services for any selected elective surgical procedures that require a second surgical opinion unless a properly executed second surgical opinion form has been obtained from the physician and submitted with the invoice for payment, or is a justified emergency or exemption.

2b. Rural health clinic services and other ambulatory services furnished by a rural health clinic.

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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.

Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine, psychologists clinical licensed by the Board of Psychology, or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus

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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. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational 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. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon a rate negotiated with providers on an individual case basis, or a flat rate by procedure, or by procedure and facility, the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee

reimbursement will cover procurement costs; all hospital costs from admission to discharge for the transplant procedure; and total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pretransplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and 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

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year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven-day period.

b. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered.

## § 7. Home health services.

A. Service must be ordered or prescribed and directed or performed within the scope of a license of a practitioner of the healing arts.

B. Nursing services provided by a home health agency.

1. Intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area.

2. Patients may receive up to 32 visits by a licensed nurse annually. Limits are per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services. Payment shall not be made for additional service unless authorized by DMAS.

C. Home health aide services provided by a home health agency.

1. Home health aides must function under the supervision of a professional nurse.

2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.

3. For home health aide services, patients may receive up to 32 visits annually. Limits shall be per recipient, regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient.

D. Medical supplies, equipment, and appliances suitable for use in the home.

1. All medically necessary supplies, equipment, and appliances are covered for patients of the home health agency. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost-effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

2. Medical supplies, equipment, and appliances for all others are limited to home renal dialysis equipment and supplies, respiratory equipment and oxygen, and ostomy supplies, as authorized by the agency.

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

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

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

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

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

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

f. Items and services which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member (for example, over-the-counter drugs; dentifrices; toilet articles; shampoos which do not require a physician's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions which do not require a physician's prescription; sugar and salt substitutes; support stockings; and nonlegend drugs).

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

h. Home or vehicle modifications.

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

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

4. For coverage of blood glucose meters for pregnant women, refer to Supplement 3 to Attachments 3.1 A and B.

E. Physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.

1. Service covered only as part of a physician's plan of care.

2. Patients may receive up to 24 visits for each rehabilitative therapy service ordered annually without authorization. Limits shall apply per recipient regardless of the number of providers rendering services. Annually shall be defined as July 1 through June 30 for each recipient. If services beyond these limitations are determined by the physician to be required, then the provider shall request prior authorization from DMAS for additional services.

F. The following services are not covered under the home health services program:

1. Medical social services;

2. Services or items which would not be paid for if provided to an inpatient of a hospital, such as private-duty nursing services, or items of comfort which have no medical necessity, such as television;

3. Community food service delivery arrangements;

4. Domestic or housekeeping services which are unrelated to patient care and which materially increase the time spent on a visit;

5. Custodial care which is patient care that primarily requires protective services rather than definitive medical and skilled nursing care; and

6. Services related to cosmetic surgery.

## § 8. Private duty nursing services.

Not provided.

## § 9. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus was carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a

hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 CFR § 440.165, are furnished by or under the direction of a physician or dentist.

## § 10. Dental services.

A. Dental services are limited to recipients under 21 years of age in fulfillment of the treatment requirements under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and defined as routine diagnostic, preventive, or restorative procedures necessary for oral health provided by or under the direct supervision of a dentist in accordance with the State Dental Practice Act.

B. Initial, periodic, and emergency examinations; required radiography necessary to develop a treatment plan; patient education; dental prophylaxis; fluoride treatments; dental sealants; routine amalgam and composite restorations; crown recementation; pulpotomies; emergency endodontics for temporary relief of pain; pulp capping; sedative fillings; therapeutic apical closure; topical palliative treatment for dental pain; removal of foreign body; simple extractions; root recovery; incision and drainage of abscess; surgical exposure of the tooth to aid eruption; sequestrectomy for osteomyelitis; and oral antral fistula closure are dental services covered without preauthorization by the state agency.

C. All covered dental services not referenced above require preauthorization by the state agency. The following services are also covered through preauthorization: medically necessary full banded orthodontics, for handicapping malocclusions, minor tooth guidance or repositioning appliances, complete and partial dentures, surgical preparation (alveoloplasty) for prosthetics, single permanent crowns, and bridges. The following service is not covered: routine bases under restorations.

D. The state agency may place appropriate limits on a service based on medical necessity, for utilization control, or both. Examples of service limitations are: examinations, prophylaxis, fluoride treatment (once/six months); space maintenance appliances; bitewing x-ray - two films (once/12 months); routine amalgam and composite restorations (once/three years); dentures (once per 5 years); extractions, orthodontics, tooth guidance appliances, permanent crowns, and bridges, endodontics, patient education and sealants (once).

E. Limited oral surgery procedures, as defined and covered under Title XVIII (Medicare), are covered for all recipients, and also require preauthorization by the state agency.

## § 11. Physical therapy and related services.

Physical therapy and related services shall be defined

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as physical therapy, occupational therapy, and speech-language pathology services. These services shall be prescribed by a physician and be part of a written plan of care. Any one of these services may be offered as the sole service and shall not be contingent upon the provision of another service. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements.

## 11a. Physical therapy.

A. Services for individuals requiring physical therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective July 1, 1988, the Program will not provide direct reimbursement to enrolled providers for physical therapy service rendered to patients residing in long term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing homes' operating cost.

C. Physical therapy services meeting all of the following conditions shall be furnished to patients:

1. Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.
3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

## 11b. Occupational therapy.

A. Services for individuals requiring occupational therapy are provided only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services provided by a local school division

employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for occupational therapy services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Occupational therapy services shall be those services furnished a patient which meet all of the following conditions:

1. Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board.
2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, a graduate of a program approved by the Council on Medical Education of the American Medical Association and engaged in the supplemental clinical experience required before registration by the American Occupational Therapy Association when under the supervision of an occupational therapist defined above, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant or a graduate engaged in supplemental clinical experience required before registration, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.
3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

11c. Services for individuals with speech, hearing, and language disorders (provided by or under the supervision of a speech pathologist or audiologist; see Page 1, General and Page 12, Physical Therapy and Related Services.)

A. These services are provided by or under the supervision of a speech pathologist or an audiologist only as an element of hospital inpatient or outpatient service, nursing facility service, home health service, services

provided by a local school division employing qualified therapists, or when otherwise included as an authorized service by a cost provider who provides rehabilitation services.

B. Effective September 1, 1990, Virginia Medicaid will not make direct reimbursement to providers for speech-language pathology services for Medicaid recipients residing in long-term care facilities. Reimbursement for these services is and continues to be included as a component of the nursing facilities' operating cost.

C. Speech-language pathology services shall be those services furnished a patient which meet all of the following conditions:

1. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology, or, if exempted from licensure by statute, meeting the requirements in 42 CFR 440.110(c);

2. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by or under the direction of a speech-language pathologist who meets the qualifications in number 1. The program shall meet the requirements of 42 CFR 405.1719(c). At least one qualified speech-language pathologist must be present at all times when speech-language pathology services are rendered; and

3. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency, and duration of the services shall be reasonable.

#### 11d. Authorization for services.

A. Physical therapy, occupational therapy, and speech-language pathology services provided in outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, school divisions, or home health agencies shall include authorization for up to 24 visits by each ordered rehabilitative service annually. The provider shall maintain documentation to justify the need for services.

B. The provider shall request from DMAS authorization for treatments deemed necessary by a physician beyond the number authorized. Documentation for medical justification must include physician orders or a plan of care signed and dated by a physician. Authorization for extended services shall be based on individual need. Payment shall not be made for additional service unless the extended provision of services has been authorized by DMAS.

#### 11e. Documentation requirements.

A. Documentation of physical therapy, occupational therapy, and speech-language pathology services provided by a hospital-based outpatient setting, home health agency, a school division, or a rehabilitation agency shall, at a minimum:

1. Describe the clinical signs and symptoms of the patient's condition;

2. Include an accurate and complete chronological picture of the patient's clinical course and treatments;

3. Document that a plan of care specifically designed for the patient has been developed based upon a comprehensive assessment of the patient's needs;

4. Include a copy of the physician's orders and plan of care;

5. Include all treatment rendered to the patient in accordance with the plan with specific attention to frequency, duration, modality, response, and identify who provided care (include full name and title);

6. Describe changes in each patient's condition and response to the rehabilitative treatment plan;

7. (Except for school divisions) describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination; and

8. In school divisions, include an individualized education program (IEP) which describes the anticipated improvements in functional level in each school year and the time frames necessary to meet these goals.

B. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

11f. Service limitations. The following general conditions shall apply to reimbursable physical therapy, occupational therapy, and speech-language pathology:

A. Patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license.

B. Services shall be furnished under a written plan of treatment and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of treatment and must be related to the patient's condition.

C. A physician recertification shall be required periodically, must be signed and dated by the physician who reviews the plan of treatment, and may be obtained

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when the plan of treatment is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long rehabilitative services will be needed.

D. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

E. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

F. Physical therapy, occupational therapy and speech-language services are to be terminated regardless of the approved length of stay when further progress toward the established rehabilitation goal is unlikely or when the services can be provided by someone other than the skilled rehabilitation professional.

§ 12. Prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.

## 12a. Prescribed drugs.

A. Drugs for which Federal Financial Participation is not available, pursuant to the requirements of § 1927 of the Social Security Act (OBRA '90 § 4401), shall not be covered except for over-the-counter drugs when prescribed for nursing facility residents.

B. The following prescribed, nonlegend drugs/drug devices shall be covered: (i) insulin, (ii) syringes, (iii) needles, (iv) diabetic test strips for clients under 21 years of age, (v) family planning supplies, and (vi) those prescribed to nursing home residents.

C. Legend drugs are covered, with the exception of anorexiant drugs prescribed for weight loss and the drugs for classes of drugs identified in Supplement 5.

D. Notwithstanding the provisions of § 32.1-87 of the Code of Virginia, and in compliance with the provision of § 4401 of the Omnibus Reconciliation Act of 1990, § 1927(e) of the Social Security Act as amended by OBRA 90, and pursuant to the authority provided for under § 32.1-325 A of the Code of Virginia, prescriptions for Medicaid recipients for multiple source drugs subject to 42 CFR § 447.332 shall be filled with generic drug products unless the physician or other practitioners so licensed and certified to prescribe drugs certifies in his own handwriting "brand necessary" for the prescription to be dispensed as written.

E. New drugs shall be covered in accordance with the

Social Security Act § 1927(d) (OBRA 90 § 4401).

F. The number of refills shall be limited pursuant to § 54.1-3411 of the Drug Control Act.

G. Drug prior authorization.

### 1. Definitions.

"Board" means the Board for Medical Assistance Services.

"Committee" means the Medicaid Prior Authorization Advisory Committee.

"Department" means the Department of Medical Assistance Services.

"Director" means the Director of Medical Assistance Services.

"Drug" shall have the same meaning, unless the context otherwise dictates or the Board otherwise provides by regulation, as provided in the Drug Control Act (§ 54.1-3400 et seq.)

2. Medicaid Prior Authorization Advisory Committee; membership. The Medicaid Prior Authorization Committee shall consist of 10 members to be appointed by the board. Five members shall be physicians, at least three of whom shall care for a significant number of Medicaid patients; four shall be pharmacists, two of whom shall be community pharmacists; and one shall be a Medicaid recipient.

a. A quorum for action by the committee shall consist of six members.

b. The members shall serve at the pleasure of the board; vacancies shall be filled in the same manner as the original appointment.

c. The board shall consider nominations made by the Medical Society of Virginia, the Old Dominion Medical Society and the Virginia Pharmaceutical Association when making appointments to the committee.

d. The committee shall elect its own officers, establish its own procedural rules, and meet as needed or as called by the board, the director, or any two members of the committee. The department shall provide appropriate staffing to the committee.

### 3. Duties of the committee.

a. The committee shall make recommendations to the board regarding drugs or categories of drugs to be subject to prior authorization, prior authorization requirements for prescription drug coverage and any subsequent amendments to or revisions of the prio.

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.

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13a. Diagnostic services.

Not provided.

13b. Screening services.

Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

13c. Preventive services.

Not provided.

13d. Rehabilitative services.

A. Intensive physical rehabilitation.

1. Medicaid covers intensive inpatient rehabilitation services as defined in subdivision A 4 in facilities certified as rehabilitation hospitals or rehabilitation units in acute care hospitals which have been certified by the Department of Health to meet the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in subdivision A 4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21-day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

B. Community mental health services.

Definitions. The following words and terms, when used in these regulations, shall have the following meanings

unless the context clearly indicates otherwise:

“Code” means the Code of Virginia.

“DMAS” means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

“DMHMRSAS” means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37.1 of the Code of Virginia.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline, and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 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 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 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:

Day health and rehabilitation services (limited to 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.

§ 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.

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## § 17. Nurse-midwife services.

Covered services for the nurse midwife are defined as those services allowed under the licensure requirements of the state statute and as specified in the Code of Federal Regulations, i.e., maternity cycle.

## § 18. Hospice care (in accordance with § 1905 (o) of the Act).

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

### B. Categories of care.

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

1. Routine home care is at-home care that is not continuous.
2. Continuous home care consists of at-home care that is predominantly nursing care and is provided as short-term crisis care. A registered or licensed practical nurse must provide care for more than half of the period of the care. Home health aide or homemaker services may be provided in addition to nursing care. A minimum of eight hours of care per day must be provided to qualify as continuous home care.
3. Inpatient respite care is short-term inpatient care provided in an approved facility (freestanding hospice, hospital, or nursing facility) to relieve the primary caregiver(s) providing at-home care for the recipient. Respite care is limited to not more than five consecutive days.
4. General inpatient care may be provided in an approved freestanding hospice, hospital, or nursing facility. This care is usually for pain control or acute or chronic symptom management which cannot be successfully treated in another setting.

### C. Covered services.

1. As required under Medicare and applicable to Medicaid, the hospice itself shall provide all or substantially all of the "core" services applicable for the terminal illness which are nursing care, physician services, social work, and counseling (bereavement, dietary, and spiritual).
2. Other services applicable for the terminal illness that shall be available but are not considered "core" services are drugs and biologicals, home health aide and homemaker services, inpatient care, medical

supplies, and occupational and physical therapies and speech-language pathology services.

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

4. To be covered, a certification that the individual is terminally ill shall have been completed by the physician and hospice services must be reasonable and necessary for the palliation or management of the terminal illness and related conditions. The individual must elect hospice care and a plan of care must be established before services are provided. To be covered, services shall be consistent with the plan of care. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no coverage will be provided.

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

a. Nursing care. Nursing care shall be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

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

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

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

e. Short-term inpatient care. Short-term inpatient

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

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

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

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

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

#### D. Eligible groups.

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

1. For the first 90-day period of hospice coverage, the hospice must obtain, within two calendar days after the period begins, a written certification statement

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

2. For any subsequent 90-day or 30-day period or a subsequent extension period during the individual's lifetime, the hospice must obtain, no later than two calendar days after the beginning of that period, a written certification statement prepared by the medical director of the hospice or the physician member of the hospice's interdisciplinary group. The certification must include the statement that the individual's medical prognosis is that his or her life expectancy is six months or less and the signature(s) of the physician(s). The hospice must maintain the certification statements.

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

Provided, with limitations. See Supplement 2 for detail.

§ 20. Extended services to pregnant women.

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

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

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

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

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

21a. Transportation.

Transportation services are provided to Virginia Medicaid recipients to ensure that they have necessary access to and from providers of all medical services. Both emergency and nonemergency services are covered. The single state agency may enter into contracts with friends of recipients, nonprofit private agencies, and public carriers to provide transportation to Medicaid recipients.

21b. Services of Christian Science nurses.

Not provided.

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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.

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.

V.A.R. Doc. No. R94-1170; Filed August 3, 1994, 11:23 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 AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

**NOTICE FROM THE REGISTRAR OF REGULATIONS:** The Virginia Gypsy Moth Quarantine is being revised pursuant to § 3.1-188.23 of the Code of Virginia, which provides authority for the Commissioner of the Virginia Department of Agriculture and Consumer Services to extend or reduce regulated areas described in the quarantine. The Commissioner's action must be reviewed by the Virginia Board of Agriculture and Consumer Services at its next regularly scheduled meeting and within 90 days of the Commissioner's action.

**Title of Regulation:** VR 115-04-02. Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine.

**Statutory Authority:** §§ 3.1-188.23 and 3.1-188.24 of the Code of Virginia.

**Effective Date:** September 26, 1994.

### Summary:

By authority granted under § 3.1-188.23 of the Code of Virginia, the Commissioner of the Virginia Department of Agriculture and Consumer Services hereby extends the regulated areas under the Virginia Gypsy Moth Quarantine due to the detection of larvae or other life stages of the gypsy moth in areas not currently under regulation. The current regulated area is changed by the addition of one independent city (Emporia) and two counties (Bath and Greensville). All other parts of the Virginia Gypsy Moth Quarantine will remain unchanged.

VR 115-04-02. Rules and Regulations for Enforcement of the Virginia Pest Law - Virginia Gypsy Moth Quarantine.

### § 1. Definitions.

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

**"Associated equipment"** means articles associated with mobile homes and recreational vehicles such as, but not limited to: awnings, tents, outdoor furniture, trailer blocks, LP gas containers and trailer skirts.

**"Compliance agreement"** means a written agreement between a person engaged in growing, handling, or moving

regulated articles, and the VDACS, U.S. Department of Agriculture (USDA), or both, wherein the former agrees to comply with the requirements of the compliance agreement.

**"Gypsy moth"** means the insect "Lymantria dispar" (Linnaeus) in any living stage.

**"Hazardous recreational vehicle site"** means any site where a recreational vehicle is, or may be parked, which is determined by an inspector to harbor populations of gypsy moth that could be spread by movement of recreational vehicles or associated equipment.

**"Inspector"** means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine and regulations.

**"Mobile home"** means any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

**"Outdoor household articles"** means articles associated with a household that have been kept outside the home, including but not limited to outdoor furniture, barbeque grills, building materials, children's play things, yard items, trash cans, dog houses, boats, hauling trailers, garden tools, tents, and awnings.

**"Recreational vehicles"** means highway vehicles, including pickup truck campers, one-piece motor homes, and camping or travel trailers, designed to serve as a temporary dwelling.

**"Scientific permit"** means a document issued by the Virginia Department of Agriculture and Consumer Services to authorize movement of regulated articles to a specified destination for scientific purposes.

**"Virginia Pest Law"** means that law set forth in Article 6 (§ 3.1-188.20 et seq.) of Chapter 13 of Title 3.1 of the Code of Virginia.

### § 2. Regulated articles.

The following articles are regulated under the provisions of this quarantine, and shall not be moved into or within Virginia, except in compliance with the conditions prescribed in this quarantine:

1. Trees with roots, shrubs with roots, and persistent woody stems, except if greenhouse grown throughout the year.

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2. Logs and pulpwood, except if moved to a mill operating under a compliance agreement.
3. Firewood.
4. Mobile homes and associated equipment.
5. Recreational vehicles and associated equipment, moving from hazardous recreational vehicle sites and the person in charge of the site has been notified.
6. Cut Christmas trees.
7. Any other products, articles (e.g., outdoor household articles), or means of conveyance, of any character whatsoever, when it is determined by an inspector that any life stage of gypsy moth is in proximity to such articles and the articles present a risk of artificial spread of gypsy moth infestations and the person in possession thereof has been so notified.

## § 3. Regulated areas.

A. Any area of another state or the District of Columbia, whether designated high risk or low risk, in which gypsy moth is known to occur and is so geographically described and regulated by the United States Department of Agriculture under the Gypsy Moth and Browntail Moth Quarantine No. 45, or under a state gypsy moth quarantine or other state legislation.

### B. The following areas in Virginia:

1. The entire counties of: Accomack, Albemarle, Amelia, Amherst, Arlington, Augusta, Bath, Buckingham, Caroline, Charles City, Chesterfield, Clarke, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Gloucester, Goochland, Greene, Greensville, Hanover, Henrico, Highland, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Loudoun, Louisa, Madison, Mathews, Middlesex, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Rockbridge, Rockingham, Shenandoah, Southampton, Spotsylvania, Stafford, Surry, Sussex, Warren, Westmoreland, and York.
2. The entire independent cities of: Alexandria, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Emporia, Fairfax City, Falls Church, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

## § 4. Conditions governing movement of regulated articles into or within Virginia.

A regulated article may not be moved into or within the state from a regulated area as described in § 3 unless a certificate or permit has been issued and attached to the regulated article in accordance with § 5.

## § 5. Conditions governing the issuance of certificates and permits.

### A. Certificates.

Certificates may be issued by an authorized inspector for the movement of the regulated articles designated in § 2 under any of the following conditions when:

1. In the judgment of the inspector, they have not been exposed to infestations;
2. They have been examined by the inspector and found to be free of gypsy moth;
3. They have been treated to destroy gypsy moth under the direction of the inspector and according to methods selected by him from administratively authorized procedures known to be effective under the conditions in which applied;
4. Grown, produced, manufactured, stored, or handled in such manner that, in the judgement of the inspector, gypsy moth would not be transmitted by movement of the article.

### B. Permits.

Permits may be issued by an authorized inspector for the movement of noncertified regulated articles to specified destinations under conditions specified for limited handling, use, processing, or treatment.

### C. Compliance agreement.

As a condition of issuance of certificates or permits for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating, or moving regulated articles may be required to sign a compliance agreement. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.

### D. Use of certificates or permits with shipments.

All regulated articles are required to have a certificate or permit attached when offered for movement. If a certificate or permit is attached to the invoice or waybill, the attachment of a certificate or limited permit to the regulated article will not be required. Certificates or permits attached to the invoice, waybill, or other shipping document, shall be given by the carrier to the consignee.

at the destination of the shipment, or to an inspector when requested.

#### E. Assembly of articles for inspection.

Persons intending to move any regulated articles shall apply for inspection as far in advance as possible. They shall safeguard the articles from infestation. The articles shall be assembled at a place and in a manner designated by the inspector to facilitate inspection.

#### § 6. Cancellation of certificates or permits.

Any certificate or permit which has been issued or authorized will be withdrawn by the inspector if he determines that the holder has not complied with conditions for their use or with any applicable compliance agreement.

#### § 7. Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and gypsy moths as provided in the Virginia Pest Law under which this quarantine is issued.

#### § 8. Shipment for experimental or other scientific purposes.

Any living stage of gypsy moth may be moved intrastate only if such movement is made for scientific purposes under scientific permit from the Virginia Department of Agriculture and Consumer Services, and in accordance with any conditions which may be required in the permit. The permit shall be securely attached to the outside of the shipping container.

#### § 9. Nonliability of the department.

The Virginia Department of Agriculture and Consumer Services shall not be liable for any costs incident to inspections required under the provisions of the quarantine and regulations, other than for the services of the inspector.

VA.R. Doc. No. R94-1166; Filed August 2, 1994, 3:19 p.m.

### Pesticide Control Board

**Title of Regulations:** 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.

**Statutory Authority:** § 3.1-249.30 of the Code of Virginia.

**Effective Date:** September 21, 1994.

#### Summary:

The final amendments (i) establish a single product registration fee and increase the annual product registration fee from \$50 (for each brand or grade with annual wholesale sales in Virginia of \$5,000 or less) and \$125 (for each brand or grade whose annual wholesale sales exceed \$5,000 per annum) to \$140 for each product registered for the product registration period beginning January 1, 1995; to \$150 for each product registered for the product registration period beginning January 1, 1997; and to \$160 for each product registered for the period beginning January 1, 1999; (ii) establish a deadline for registering pesticide products each year and assess 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 pesticide classified for restricted use subsequent to the expiration of his certificate; (iv) eliminate the conflict between subsection C of § 3.1-249.52 of the Code of Virginia, which provides the Pesticide Control Board authority to require reexamination of a registered technician and not reinstruction as currently required in § 2.3 of the regulation when the registered technician fails to renew his license within 60 days of the expiration date and establish a reexamination fee of \$15; and (v) add definitions for "brand" and "grade."

**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 Larry H. Redford, Regulatory Coordinator, Department of Agriculture and Consumer Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-3539. There may be a charge for copies.

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.

#### PART I. DEFINITIONS.

##### § 1. I.I. Definitions.

The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise. An asterisk following a definition denotes that the definition has been taken from Chapter 14.1, Article 1, of the Virginia Pesticide Control Act. All terms defined in the Virginia Pesticide Control

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Act, Chapter 14.1 (§ 3.1-249.27 et seq.) of Title 3.1 of the Code of Virginia are hereby incorporated by reference in this regulation.

"Board" means the Pesticide Control Board. \*

"Brand" means any word, name, symbol, device, or any combination thereof, which serves to distinguish a pesticide product manufactured, distributed, sold, or offered for sale by one person from that manufactured, distributed, sold, or offered for sale by any other person.

"COB" means close-of-business.

[ "Commissioner" means the Commissioner of Agriculture and Consumer Services. ] \*

[ "Department" means the Department of Agriculture and Consumer Services. ] \*

"Grade" means formulation of a pesticide, except that the addition of pigments solely for color shall not constitute a change in the formulation such as to constitute a new grade requiring registration.

"Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

[ "Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator, and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only under the direct supervision of a certified commercial applicator. ] \*

## PART II. FEES.

### § 2: Fees.

A: § 2.1. Pesticide product registration fee ; registration of new pesticide products; renewal of pesticide product registration .

The registrant of any brand or grade of pesticide to be registered with the commissioner shall pay to the department an annual registration fee for each brand or grade which is manufactured, distributed, sold, or offered for sale, used or offered for use within the Commonwealth. The fee for each brand or grade shall be \$125, with the exception of brands or grades with annual wholesale sales in Virginia of \$5,000 or less. The fee for each excepted brand or grade shall be \$50. All registrations shall expire on December 31 of each year, unless cancelled or otherwise terminated for cause. A registration not cancelled or otherwise terminated for cause will be renewed upon receipt of the annual

registration fee.

A. Every pesticide product which is to be manufactured, distributed, sold, offered for sale, used or offered for use within the Commonwealth shall be registered with the commissioner [ of Agriculture and Consumer Services ] . The fee for registering each brand shall be [ ~~\$175~~ \$140 for the product registration period beginning January 1, 1995; \$150 for the product registration period beginning January 1, 1997; and \$160 for the product registration period beginning January 1, 1999 ] . If a brand has more than one grade, each grade shall be registered, not the brand at the [ ~~\$175~~ fee registration fee then in effect ] . The registration for a new pesticide product shall be effective upon receipt by the Department of Agriculture and Consumer Services of the application form accompanied by the required registration fee.

B. All pesticide product registrations shall expire on December 31 of each year unless canceled or otherwise terminated for cause. A registration not canceled or otherwise terminated for cause will be renewed upon receipt of the annual registration fee as set forth in subsection A of this section accompanied by the application renewal form. A registration that has been canceled or otherwise terminated for cause prior to December 31 may be resubmitted as a new registration when the conditions resulting in the cancellation or termination have been resolved. The registration of each brand or grade shall be renewed with the commissioner [ of Agriculture and Consumer Services ] prior to December 31 of each year. If the registration is not renewed prior to December 31 of each year, the commissioner shall assess a late fee of 20% which shall be added to the registration fee. The late fee shall apply to all renewal registrations submitted to the department [ of Agriculture and Consumer Services ] any time during the 12-month period following the expiration of the registration. Registrants who permit a registration to lapse for more than one year shall thereafter register the product as a new product. The applicant shall pay the total fee prior to the issuance of the registration by the commissioner.

B: § 2.2. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of \$35 and an annual nonrefundable renewal fee of \$35 thereafter. All certificates shall expire at midnight on June 30 of each year unless suspended or revoked for cause. All certificates not suspended or revoked for cause will be renewed upon receipt of the annual renewal fee. If the applicator does not file an application for renewal of his certificate prior to COB April June 30, the commissioner shall assess a penalty late filing fee of 20% which shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. Such penalty shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in the application in Virginia of pesticides classified for restricted

use subsequent to the expiration of his certificate. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.1-249.52 of the *Code of Virginia* shall be \$35 and shall be nonrefundable. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

C. § 2.3. Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of \$15 and an annual nonrefundable renewal fee of \$15 thereafter. All certificates shall expire at midnight on June 30 of each year unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of the annual renewal fee. If the application for renewal of any certificate is not filed prior to COB ~~April~~ June 30, a ~~penalty late filing fee~~ of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. Such ~~penalty~~ shall not apply if the applicant furnishes an affidavit certifying that he has not engaged in the application in Virginia of pesticides classified for restricted use subsequent to the expiration of his certificate. However, if the certificate is not renewed within 60 days following the expiration of the certificate, then the commissioner shall require such certificate holder to receive as a condition of renewal of his certificate ~~reinstruction in the required course of training~~. If the certificate is not renewed within 60 days following the expiration of the certificate, [ then ] such certificate holder shall be required to take another examination. The fee for [ ~~the this~~ ] reexamination [ or for any commercial applicator reexamination ] pursuant to subsection C of § 3.1-249.52 of the *Code of Virginia* shall be \$15 and shall be nonrefundable. Federal, state and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

D. § 2.4. Business license fee.

Any [ person ] or [ operating as a ] pesticide business [ that distributes, stores, sells, recommends for use, mixes, or applies pesticides ] shall pay a nonrefundable annual pesticide business licensing fee of \$50 for each location or outlet that he or it operates. All business licenses will expire at midnight on March 31 of each year unless suspended or revoked for cause. If a business license is not suspended or revoked for cause, it will be renewed upon payment of the annual fee. If [ a person or any person operating as a pesticide ] business fails to apply for renewal of a pesticide business license at least ~~60 days~~ prior to expiration, by COB March 31 the applicant, as a condition of renewal, shall pay a late license fee of 20% of the licensing fee in addition to that fee. Merchants of

limited quantities of nonrestricted use pesticides including grocery stores, convenience stores, drug stores, veterinarians and other businesses who sell pesticides primarily for limited household use shall be exempt from the business license requirement.

VA.R. Doc. No. R94-1168; Filed August 3, 1994, 10:58 a.m.

## DEPARTMENT OF LABOR AND INDUSTRY

### Safety and Health Codes Board

**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 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 425-02-92. Permit-Required Confined Spaces Standard for General Industry (1910.146).

**Statutory Authority:** § 40.1-22(5) of the Code of Virginia.

**Effective Date:** October 1, 1994.

**Summary:**

This document adds a metric equivalent in paragraph (k)(3)(ii) of the Permit-Required Confined Spaces standard, § 1910.146, and further revises the "Atmospheric monitoring" section of Appendix E, "Sewer System Entry." The reference to broad range sensors, which was removed by federal OSHA's previous revision of this section (58 Fed. Reg. 34844, June 29, 1993), and adopted by the Safety and Health Codes Board on November 15, 1993, is restored and the advantages and limitations of both the oxygen sensor/broad range sensor instrument and the substance-specific devices are more clearly stated. No preference, however, is expressed for either type of meter. Instrument selection is left to the discretion of the employer who is in a position to decide what type of testing instrument is appropriate for a particular sewer entry.

Note on Incorporation by Reference

Pursuant to § 9-6.18 of the Code of Virginia, the Permit-Required Confined Spaces Standard for General Industry (1910.146) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for public inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia, and in the office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On July 19, 1994, the Safety and Health Codes Board

# Final Regulations

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adopted an identical version of federal OSHA's technical amendments to "Permit-Required Confined Spaces for General Industry," 29 CFR 1910.146, as published in the Federal Register, Vol. 59, No. 96, pp. 26115-26116, Thursday, May 19, 1994. The amendments as adopted are set out below.

When the regulations, as set forth in the Amendment to Permit-Required Confined Spaces, Final Rule, § 1910.146, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	VOSH Equivalent
Assistant Secretary OSHA	Commissioner of Labor and Industry VOSH
Agency 29 CFR 1910.146 May 19, 1994	Department 1910.146 October 1, 1994.

## PART 1910 - OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for subpart J of part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

### § 1910.146 (Amended)

2. The last sentence of paragraph (k)(3)(ii) of § 1910.146 is amended by adding "(1.52 m)" between the words "feet" and "deep."

3. Section (2), Atmospheric monitoring, of Appendix E of § 1910.146 is revised to read as follows:

(2) Atmospheric monitoring. Entrants should be trained in the use of, and be equipped with, atmospheric monitoring equipment which sounds an audible alarm, in addition to its visual readout, whenever one of the following conditions are encountered: oxygen concentration less than 19.5%; flammable gas or vapor at 10% or more of the lower flammable limit (LFL); or hydrogen sulfide or carbon monoxide at or above 10 ppm or 35 ppm, respectively, measured as an 8-hour time-weighted average. Atmospheric monitoring equipment needs to be calibrated according to the manufacturer's instructions. The oxygen sensor/broad range sensor is best suited for initial use in situations where the actual or potential contaminants have not been identified, because broad range sensors, unlike substance-specific sensors, enable employers to obtain an overall reading of the hydrocarbons (flammable) present in the space. However, such sensors only indicate that a

hazardous threshold of a class of chemicals has been exceeded. They do not measure the levels of contamination of specific substances. Therefore, substance-specific devices, which measure the actual levels of specific substances, are best suited for use where actual and potential contaminants have been identified. The measurements obtained with substance-specific devices are of vital importance to the employer when decisions are made concerning the measures necessary to protect entrants (such as ventilation or personal protective equipment) and the setting and attainment of appropriate entry conditions. However, the sewer environment may suddenly and unpredictably change, and the substance-specific devices may not detect the potentially lethal atmospheric hazards which may enter the sewer environment.

Although OSHA considers the information and guidance provided above to be appropriate and useful in most sewer entry situations, the agency emphasizes that each employer must consider the unique circumstances, including the predictability of the atmosphere, of the sewer permit spaces in the employer's workplace in preparing for entry. Only the employer can decide, based upon his or her knowledge of, and experience with permit spaces in sewer systems, what the best type of testing instrument may be for any specific entry operation.

The selected testing instrument should be carried and used by the entrant in sewer line work to monitor the atmosphere in the entrant's environment, and in advance of the entrant's direction of movement, to warn the entrant of any deterioration in atmospheric conditions. Where several entrants are working together in the same immediate location, one instrument, used by the lead entrant, is acceptable.

V.A.R. Doc. No. R94-1141; Filed July 25, 1994, 4:37 p.m.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

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

August 11, 1994

Mr. Charles B. Ashby, Chairman  
Virginia Safety and Health Codes Board  
C/o The Department of Labor and Industry  
13 South Thirteenth Street  
Richmond, Virginia 23219

RE: VR 425-02-92 - Permit Required Confined Spaces Standard  
for General Industry, 1910.146

ATTENTION: Mr. John J. Crisanti, Director  
Office of Enforcement Policy

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith  
Registrar of Regulations

JWS:jbc

# Final Regulations

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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 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 425-02-97. General Industry Standard for Electrical Power Generation, Transmission and Distribution (1910.269).

**Statutory Authority:** § 40.1-22(5) of the Code of Virginia.

**Effective Date:** October 1, 1994.

**Summary:**

*This new standard addresses the work practices to be used during the operation and maintenance of electric power generation, transmission, and distribution facilities. This standard primarily covers the following types of work operations: inspection, substation and generating plant switching (connection and disconnection of facilities), maintenance of lines and equipment, line clearance tree trimming, testing and fault locating, streetlight relamping, chemical cleaning of boilers, and other operation and maintenance activities such as requirements relating to enclosed spaces, hazardous energy control, working near energized parts, grounding for employee protection, and work on underground and overhead installations.*

*Corrections were made to several provisions in § 1910.269 which contained minor typographical or grammatical errors.*

*As a result of the settlement agreement between federal OSHA and Edison Electric Institute (et al.) on March 28, 1994, the U.S. Court of Appeals for the Eleventh Circuit stayed enforcement of paragraph 1910.269(v)(1)(xii) to February 1, 1996 (in Virginia). The following paragraphs of § 1910.269 have been stayed to February 1, 1995: (a)(2), (b)(1)(ii), (d) except for (d)(2)(i) and (iii), (e)(2) and (3), (f)(2)(iii), (l)(6)(iii), (m), (n)(3), (n)(4)(ii), and (n)(8), (n)(6) and (7) as applicable to lines and equipment operated at 600 volts or less, (o) except for (o)(2)(1), (r)(1)(vi), and (u)(1), (4) and (5).*

Note on Incorporation By Reference

Pursuant to § 9-6.18 of the Code of Virginia, the General Industry Standard for Electrical Power Generation, Transmission and Distribution (1910.269) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On July 19, 1994, the Safety and Health Codes Board adopted an identical version of federal OSHA's final rule entitled, "General Industry Standard for Electrical Power Generation, Transmission and Distribution," 29 CFR 1910.269, as published in the Federal Register, Vol. 59, No. 20, pp. 4437-4476, Monday, January 31, 1994. A stay of enforcement and correction to this standard was published in the Federal Register, Vol. 59, No. 125, pp. 33658-33664, Thursday, June 30, 1994. The amendments as adopted are not set out.

When the regulations, as set forth in the General Industry Standard for Electrical Power Generation, Transmission and Distribution, 1910.269, final rules, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
March 11, 1994	October 1, 1994
June 30, 1994	October 1, 1994
November 1, 1994	February 1, 1995
February 1, 1996	February 1, 1996

VA.R. Doc. No. R94-1140; Filed July 25, 1994, 4:35 p.m.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

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

August 11, 1994

Mr. Charles B. Ashby, Chairman  
Virginia Safety and Health Codes Board  
C/o The Department of Labor and Industry  
13 South Thirteenth Street  
Richmond, Virginia 23219

RE: VR 425-02-97 - General Industry Standard for Electrical  
Power Generation, Transmission and  
Distribution, 1910.269

ATTENTION: Mr. John J. Crisanti, Director  
Office of Enforcement Policy

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

*Joan W. Smith*  
Joan W. Smith  
Registrar of Regulations

JWS:jbc

# Final Regulations

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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 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 425-02-151. Personal Protective Equipment, General Industry (1910.132 through 1910.140).

**Statutory Authority:** § 40.1-22(5) of the Code of Virginia.

**Effective Date:** October 1, 1994.

**Summary:**

*Federal OSHA has made corrections to the final rule for Personal Protective Equipment for General Industry, which was published on April 6, 1994 (59 Fed. Reg. 16334). As published the final rule contained typographical errors as well as language that did not clearly express federal OSHA's intent.*

*Federal OSHA's intent in the promulgation of § 1910.132 (General Requirements) of the final rule was that paragraph (d), hazard assessment and equipment selection, and paragraph (f), training, would apply only to §§ 1910.133, 1910.135, 1910.136 and 1910.138. Therefore, OSHA has amended the final rule by adding a new paragraph (g) to § 1910.132 to explain the applicability of the requirements for hazard assessments and training.*

*In § 1910.133 (Eye and Face Protection) on page 16361 (59 Fed. Reg. 16334, April 6, 1994), the table, "Filter Lenses for Protection Against Radiant Energy," contains a typographical error. The column heading "Electric Size 1/32 in." should read, "Electrode Size 1/32 in."*

*In § 1910.136 (Foot Protection), on page 16362 of the final rule, paragraph (a) reads in part:*

*General requirements. Each affected employee shall wear protective footwear when working in areas where there is a danger of foot injuries due to falling and rolling objects..(emphasis added).*

*Federal OSHA's intent in promulgating § 1910.136 was to require the use of protective footwear when either of the above hazards were present. Therefore, the word "or" is replacing the word "and" to clarify OSHA's intent.*

*In creating the new § 1910.138 (Hand Protection),*

*federal OSHA inadvertently failed to explain that it was removing and replacing the existing § 1910.138, "Effective dates," with the new "Hand Protection" section. Therefore, on page 16362 of the final rule, amendatory instruction number 5, was amended to read as follows: "Section 1910.138 is revised to read as follows:"*

**Note on Incorporation By Reference**

Pursuant to § 9-6.18 of the Code of Virginia, Subpart I of the General Industry Standards for Personal Protective Equipment (§§ 1910.132 through 1910.140) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On July 19, 1994, the Safety and Health Codes Board adopted an identical version of federal OSHA's corrections to Subpart I, General Industry Standards for Personal Protective Equipment entitled, "General Requirements," 29 CFR 1910.132; "Eye and Face Protection," 29 CFR 1910.133; "Foot Protection," 29 CFR 1910.136; and "Hand Protection," 29 CFR 1910.138 as jointly published in the Federal Register, Vol. 59, No. 126, pp. 33910-33911, Friday, July 1, 1994. The amendments as adopted are not set out, but are explained in the preceding summary.

When the regulations, as set forth in the General Industry Standards for Personal Protective Equipment, Subpart I (§§ 1910.132, 1910.133, 1910.136 and 1910.138), Final Rules, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following terms shall be considered to read as shown below:

Federal Terms	VOSH Equivalent
29 CFR 1910.132	1910.132
29 CFR 1910.133	1910.133
29 CFR 1910.136	1910.136
29 CFR 1910.138	1910.138
Assistant Secretary Agency July 5, 1994	Commissioner of Labor and Industry Department October 1, 1994

VA.R. Doc. No. R94-1142; Filed July 25, 1994, 4:38 p.m.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

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

August 11, 1994

Mr. Charles B. Ashby, Chairman  
Virginia Safety and Health Codes Board  
C/o The Department of Labor and Industry  
13 South Thirteenth Street  
Richmond, Virginia 23219

RE: VR 425-02-151 - Personal Protective Equipment, General  
Industry, 1910.132 - 1910-140

ATTENTION: Mr. John J. Crisanti, Director  
Office of Enforcement Policy

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

A handwritten signature in cursive script that reads "Joan W. Smith".

Joan W. Smith  
Registrar of Regulations

JWS: jbc

# Final Regulations

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**REGISTRAR'S NOTICE:** The following regulation filed by the Department of Labor and Industry is excluded from Article 2 of the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** VR 425-02-151. Personal Protective Equipment, General Industry (1910.132 through 1910.140).

**Statutory Authority:** § 40.1-22(5) of the Code of Virginia.

**Effective Date:** October 1, 1994.

**Summary:**

*This revised standard contains new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. These revisions also update the existing federal OSHA standards and will prevent accidents caused by inadequate electrical protective equipment.*

**Note on Incorporation By Reference**

Pursuant to § 9-6.18 of the Code of Virginia, the General Industry Standards for Personal Protective Equipment (1910.132 through 1910.140) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the entire document will not be printed in The Virginia Register of Regulations. Copies of the document are available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia, and in the Office of the Registrar of Regulations, General Assembly Building, Capitol Square, Room 262, Richmond, Virginia.

On July 19, 1994, the Safety and Health Codes Board adopted an identical version of federal OSHA's amended final rule to the General Industry Standards for Personal Protective Equipment (1910.132 through 1910.140) entitled, "Electrical Protective Equipment," 29 CFR 1910.137 as jointly published in the Federal Register, Vol. 59, No. 20, pp. 4435-4437, Monday, January 31, 1994. The amendments as adopted are not set out.

When the regulations, as set forth in the General Industry Standard for Electrical Protective Equipment, § 1910.137, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	VOSH
May 1, 1994	October 1, 1994

VA.R. Doc. No. R94-1143; Filed July 25, 1994, 4:39 p.m.



COMMONWEALTH of VIRGINIA

JOAN W. SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

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

August 11, 1994

Mr. Charles B. Ashby, Chairman  
Virginia Safety and Health Codes Board  
C/o The Department of Labor and Industry  
13 South Thirteenth Street  
Richmond, Virginia 23219

RE: VR 425-02-151 - Personal Protective Equipment, General  
Industry, Electrical Protective  
Equipment, 1910.132 - 1910-140

ATTENTION: Mr. John J. Crisanti, Director  
Office of Enforcement Policy

Dear Mr. Ashby:

This will acknowledge receipt of the above-referenced regulations from the Department of Labor and Industry.

As required by § 9-6.14:4.1 C.4.(c). of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law.

Sincerely,

Handwritten signature of Joan W. Smith in cursive script.  
Joan W. Smith  
Registrar of Regulations

JWS:jbc

# Final Regulations

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

**REGISTRAR'S NOTICE:** The following regulation is exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4(c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** State Plan for Medical Assistance Relating to Vaccines for Children Program.  
**VR 460-01-9.1. Pediatric Immunization Program (§ 1.5).**

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

**Effective Date:** October 1, 1994.

### Summary:

*The purpose of this action is to amend the State Plan for Medical Assistance concerning the method by which providers may acquire and be reimbursed for vaccines recommended in the schedule developed by the Advisory Committee on Immunization Practices, due to action taken by the United States Congress in 1993. This amending action also will address the method by which federally vaccine-eligible children are to obtain medically appropriate vaccinations.*

*The purpose of the Vaccines for Children (VFC) Program is to remove financial barriers for both recipients and providers in obtaining vaccines in order to increase access and availability, thereby improving immunization rates within the indigent and uninsured populations. Routine childhood immunizations, such as polio, DPT, and MMR vaccines, are currently a covered service under Virginia Medicaid. They may be obtained at physicians' offices, health departments, clinics, and various provider sites. With one exception, providers are reimbursed the acquisition cost for vaccines provided to Medicaid eligible children. The costs of administering the immunization are covered by the reimbursement for the appropriate evaluation and management visit billed by the provider in conjunction with the immunization.*

*The exception to this practice is for the provision of the MMRII vaccine, which is provided to physicians at no cost under a direct purchase replacement plan that ships vaccine directly to the physician. DMAS reimburses the manufacturer after a claim for MMRII is submitted. In the case of this particular vaccine, providers are reimbursed a \$2.00 per dose handling fee for participating in the direct purchase program.*

*Under the VFC program, the federal government will*

*pay for immunizations administered to program-eligible children and distribute these vaccines to a broad range of health care professionals who offer immunizations. Virginia Medicaid will implement an immunization administration fee to reimburse providers for the supplies and administrative costs associated with the provision of VFC vaccines.*

*The Vaccines for Children program defines four categories of children eligible for federally funded vaccines: Medicaid eligibles; uninsured children; American Indians, as defined in the Indian Health Services Act; and children whose health insurance plans do not cover immunizations. Under this program, children whose insurance does not cover vaccinations as a benefit will be able to receive free vaccines under the VFC program only if they are obtained at federally qualified health centers.*

*The VFC program will reduce financial barriers to the provision of vaccines for both providers and eligible children. Providers will no longer incur the inventory costs of purchasing these vaccines and program-eligible children will not have to pay for the costs of the vaccines. DMAS will no longer have to reimburse providers for the acquisition costs of these vaccines, since they will be purchased by the federal government through contracts with individual vaccine manufacturers.*

*The Virginia Department of Health is the lead agency for the implementation, operation, and evaluation of this program. DMAS involvement is to coordinate with VDH in provider enrollment, recipient access, utilization monitoring, outreach, and to establish an immunization administration fee. The agency projects no significant negative issues involved in implementing this regulatory change.*

*The providers affected by this program will be physicians, hospitals, and clinics who elect to participate in the VFC program. VDH and DMAS staff are meeting with affected provider groups and associations to inform them of the program and to solicit their input and support regarding provider enrollment and participation. This activity will continue up to and through the expected October 1, 1994, program implementation date in order to ensure maximum provider participation. Once all elements of the implementation and operation of the program have been identified and resolved, DMAS, in cooperation with VDH, will provide information on the VFC program to affected providers.*

*All Medicaid recipients currently eligible for childhood immunizations will be affected by this program. There are no localities which are uniquely affected by these regulations as they apply statewide.*

*Estimated costs savings for DMAS will depend upon the number of Medicaid providers who enroll in the*

VFC program, the number of recipients who receive immunizations under this program, and the amount of the administration fee that will be reimbursed to VFC program providers. In calendar year 1993, DMAS spent \$1,858,068 (GF) on VFC category vaccines. Although the federal government will assume those costs under the VFC program, potential savings will be reduced by the necessity of paying an immunization administration fee. Depending on the exact amount of that fee, any or all of these savings may be lost. However, DMAS' analysis shows that the proposed federal maximum for the immunization administration fees will not result in a net increase in general fund expenditures at DMAS. In addition, not all providers may participate in the VFC program and it may be necessary to retain an acquisition cost-based reimbursement method for them.

**Agency Contact:** Copies of the regulation may be obtained from Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-8850. There may be a charge for copies.

Citation: 1928 of the Act.

## § 1.5. Pediatric immunization program.

A. The state has implemented a program for the distribution of pediatric vaccines to program-registered providers for the immunization of federally vaccine-eligible children in accordance with § 1928 as indicated below.

1. The state program will provide each vaccine-eligible child with medically appropriate vaccines according to the schedule developed by the Advisory Committee on Immunization Practices and without charge for the vaccines.

2. The state will outreach and encourage a variety of providers to participate in the program and to administer vaccines in multiple settings, e.g., private health care providers, providers that receive funds under Title V of the Indian Health Care Improvement Act, health programs or facilities operated by Indian tribes, and maintain a list of program-registered providers.

3. With respect to any population of vaccine-eligible children a substantial portion of whose parents have limited ability to speak the English language, the state will identify program-registered providers who are able to communicate with this vaccine-eligible population in the language and cultural context which is most appropriate.

4. The state will instruct program-registered providers to determine eligibility in accordance with § 1928(b) and (h) of the Social Security Act.

5. The state will assure that no program-registered

provider will charge more for the administration of the vaccine than the regional maximum established by the Secretary. The state will inform program-registered providers of the maximum fee for the administration of vaccines.

6. The state will assure that no vaccine-eligible child is denied vaccines because of an inability to pay an administration fee.

7. Except as authorized under § 1915(b) of the Social Security Act or as permitted by the Secretary to prevent fraud or abuse, the state will not impose any additional qualifications or conditions, in addition to those indicated above, in order for a provider to qualify as a program-registered provider.

B. The state has not modified or repealed any immunization law in effect as of May 1, 1993, to reduce the amount of health insurance coverage of pediatric vaccines.

C. The state Medicaid agency has coordinated with the state public health agency in the completion of this preprint page.

D. The state agency with overall responsibility for the implementation and enforcement of the provisions of § 1928 is:

State Medicaid Agency

State Public Health Agency

VA.R. Doc. No. R94-1169; Filed August 3, 1994, 11:24 a.m.

# Final Regulations

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## COMMONWEALTH of VIRGINIA

JOAN W. SMITH  
REGISTRAR OF REGULATIONS

VIRGINIA CODE COMMISSION  
General Assembly Building

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

August 8, 1994

Mr. Robert C. Metcalf, Director  
Department of Medical Assistance Services  
600 East Broad Street, Suite 1300  
Richmond, Virginia 23219

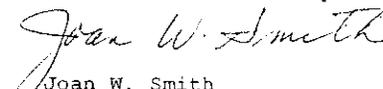
RE: VR 460-01-9.1 - Pediatric Immunization Program  
& 460-01-9.2 (Vaccines for Children Program)

Dear Mr. Metcalf:

This will acknowledge receipt of the above-referenced regulations from the Department of Medical Assistance Services.

As required by § 9-6.14:4.1 C.4.(c) of the Code of Virginia, I have determined that these regulations are exempt from the operation of Article 2 of the Administrative Process Act, since they do not differ materially from those required by federal law. However, this determination is premised on the assumption that both the Attorney General's Office and HCFA approve the content as complying with the relevant law.

Sincerely,

  
Joan W. Smith  
Registrar of Regulations

JWS:jbc

BOARD OF 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.

**Effective Date:** September 21, 1994.

**Summary:**

*The final 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 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).*

**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 Russell Porter, Board of Medicine, 6606 West Broad Street, Richmond, VA 23230-1717, telephone (804) 662-9285. There may be a charge for copies.

VR 465-02-1. Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, Chiropractic, Clinical Psychology and Acupuncture.

PART I.  
GENERAL PROVISIONS.

§ 1.1. Definitions.

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

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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 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 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.

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(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 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

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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 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

- 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

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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 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.
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.

# Final Regulations

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*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 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 Department of Health Professions, Board of Medicine, 6606 West Broad Street, Richmond, Virginia 23230, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Room 262, Richmond, Virginia 23219.

Application for a License to Practice Medicine/Osteopathy (Rev. 3/94)

Claims History Sheet (Rev. 7/93) #A

Employment Verification/Reference (Rev. 7/93) #B

Clearance From Other State Boards (Rev. 7/93) #C

Virginia Request for Physician Profile (Rev. 7/93) #D

Disciplinary Inquiries (Rev. 7/93) #E

Certificate of Secretary of State Board Issuing Original License (Rev. 7/93) #F

Educational Commission for Foreign Medical Graduates

Certification (Rev. 7/93) #G

Report of Clinical Rotations (Rev. 7/93)

Licensure Registration (Rev. 7/93)

Examination and Board Action History Report (Rev. 3/93)

Request for Endorsement of Certification by National Board of Medical Examiners

Instructions Regarding the Podiatry Examination (PMLexis) (Rev. 5/24/94)

Application for a License to Practice Podiatry (Rev. 3/94)

National Board of Podiatric Medical Examiners Request for Scores on Part I and II (Rev. 7/93) Form #1

Certification of Grades Attained on the Podiatric Medical Licensing Examination for States (PMLexis) (Rev. 7/93)

Form #H

Clearance from Other State Boards (Rev. 7/93) Form #C (P)

Virginia Request for Podiatry Disciplinary Action (Rev. 7/93) #J

Application for a License to Practice Chiropractic (DHP-03-058, Rev. 3/94)

Chiropractic Employment/Professional Activity Questionnaire (Rev. 7/93) #B

Chiropractic Clearance from Other State Boards (Rev. 7/93) #C

Application for a License to Practice as an Acupuncturist (DHP-18-079) Rev. 1/94

Verification of Licensed Acupuncturist Practice, DHP-18-079 (Rev. 1/94) #B

Licensed Acupuncturist Verification of State Licensure, DHP-18-079 #C (Rev. 1/94)

Verification of NCCA Certification (Rev. 2/25/94) #K

Licensure Registration (Licensed Acupuncturist), DHP-18-079 (Rev. 1/94)

Instructions for Completing an Application for Certification as a Respiratory Therapy Practitioner, DHP-030-061 (Rev. 1/20/94)

Application for Certification as a Respiratory Therapy Practitioner, DHP-030-061 (Rev. 3/94)

Credentialing Form from the National Board of Respiratory Care, Inc.

Certification of Registration

Correctional Health Assistant, Department of Corrections - Penal Institutions Only (Rev. 7/93)

Correctional Health Assistants - Applications for Annual Renewal, HRB-30-055 (Rev. 4/11/88)

Instructions for Completing Reinstatement of Licensure Application

Application for Reinstatement of Licensure

Instruction for Completing an Application for Certification as an Occupational Therapist

Application for Certification to Practice Occupational Therapy, DHP-030-080 (Rev. 3/94)

Instructions for Completing the Application for Certification by Examination, HRB-601 (Rev. 12/93)

Graduate Optometric Programs Approved

Postgraduate Optometric Programs Approved

Application to Practice as a Certified Optometrist, DHP-035-070 (Rev. 3/94)

Certification of Training, HRB-601 (Rev. 1/31/91) Form A

Clearance from other State Board, HRB-601 (Rev. 1/31/91) Form B

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Certificate of Registration - Optometry TPA Instructions for Completing an Application for Certification as a Radiological Technology Practitioner, DHP-030-081  
Application for Certification to Practice as a Radiologic Technologist Certified, DHP-030-081 (Rev.3/94)  
Request for Letter of Good Standing - Radiological Technology Practitioners, DHP-030-081, (Rev. 7/93)  
Clearance from other State Board or Regulatory Authority, DHP-030-081, (Rev. 10/91)  
Requirements and Instructions for an Intern/Resident License, HRB-30-061, (Rev 2/7/92.)  
Application for a Temporary License for Intern/Resident Training Program, DHP-030-061, (Rev. 3/94)  
Certificate of Professional Education, Intern/Resident, (Rev. 7/93) Form B  
Verification of Standard ECFMG Certificate, Intern/Resident, # C  
Instructions for Completing Physician Assistant Application  
Application for a License as a Physician's Assistant, (Rev. 3/94)  
Protocol of Physician's Assistant's Duties, (Rev. 7/93), Form #1  
Physician's Assistant Invasive Procedures Protocol, (Rev. 7/93) Form #2  
Employment/Professional Activity Questionnaire - Reinstatement  
Clearance from other Regulatory Boards - Reinstatement  
Disciplinary Inquiries - Reinstatement  
Virginia Request for Physician Profile - Reinstatement  
Instructions for Completing Reinstatement of Licensure Application for Physical Therapy  
Instructions for Completing Reinstatement of Licensure Application for Physical Therapy  
Application for Reinstatement of Licensure  
Testimonial of Moral Character - Reinstatement  
Verification of Physical Therapy Practice - Reinstatement, DHP-30-059, Rev. 3/93  
Verification of State Licensure - Reinstatement - Physical Therapist/Physical Therapist Assistant  
Traineeship Application Reinstatement of Licensure - Reinstatement  
Medicine and Osteopathy - 3 additional forms - Testing  
Physical Therapy and P.T. Assistants - All Forms for Initial Licensure  
Clinical Psychologist - 2 forms  
Application for M.D. to be a Licensed Acupuncturist

VA.R. Doc. No. R94-1139; Filed July 25, 1994, 3:12 p.m.

# STATE CORPORATION COMMISSION

## BUREAU OF INSURANCE

July 5, 1994

### ADMINISTRATIVE LETTER 1994-5

TO: All Insurers, Health Services Plans, Health Maintenance Organizations and Other Interested Parties

RE: Legislation enacted by the 1994 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 1994 session of the Virginia General Assembly. The effective date of these statutes is July 1, 1994, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the attachment carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments made to insurance-related laws during the 1994 session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Please note that five bills included in this year's summary reference the addition of § 38.2-3407.2 to the Code of Virginia, two bills reference the addition of § 38.2-3407.3 and two bills reference the addition of § 38.2-2230. The Virginia Code Commission will determine the correct citation for each of the new code sections, and the results will be evident when the official code compilation is published by the Michie Company later this summer. Until then, we properly refer to each of these new sections as §§ 38.2-3407.2, 38.2-3407.3 or 38.2-2230 as they appear in House Bills 840 and 1057, Senate Bills 403, 480, and 552 and House Bills 245 and 883, respectively.

/s/ Steven T. Foster  
Commissioner of Insurance

ALL BILLS ARE EFFECTIVE JULY 1, 1994 UNLESS OTHERWISE NOTED

## PROPERTY AND CASUALTY INSURANCE

House Bill 76

### Birth Injury Fund

Amends § 38.2-5016 by requiring the Board of Directors of the Virginia Birth-Related Neurological Injury Compensation Program to establish in its plan of operation a procedure for giving notice of the program to obstetrical patients. The notice must include an explanation of the patient's rights and limitations under the program. The bill

also allows the Board to reduce the annual assessment for participating physicians and hospitals after the State Corporation Commission determines that the fund is actuarially sound. The bill also amends § 38.2-5020 to allow for participating hospitals to be assessed on a pro-rated basis.

House Bill 190

### Interest Earned by Premium Finance Companies

Amends § 38.2-4705 by prohibiting interest from being fully earned on premium finance agreements if the loan is prepaid or if one or more of the policies listed on the premium finance agreement is canceled prior to the expiration of the premium finance agreement. The bill also prohibits an insurance premium finance company from giving, and an insurance agent from accepting, any valuable consideration as an inducement to finance the premium of any insurance policy.

House Bill 245

### Mandatory Offer of Rental Reimbursement Coverage

Adds § 38.2-2230 which requires insurers to offer to the named insured the option of purchasing rental reimbursement coverage. This mandatory offer must be given in writing by insurers issuing new and renewal motor vehicle insurance policies, as defined in § 38.2-2212, which provide comprehensive or collision coverage.

House Bill 504

### Premium Finance Charges

Amends § 38.2-4705 by allowing a premium finance company to collect an additional premium charge, not to exceed \$10.00, if additional premiums are added to an existing premium finance agreement at the insured's request. The new law makes it clear that only one additional premium charge may be applied during the term of a premium finance agreement. Section 38.2-4706 is amended to increase the bad check charge from \$15.00 to \$20.00.

House Bill 883

### Arbitration

Adds § 38.2-2230 requiring insurers to arbitrate and settle all disputed automobile physical damage claims in accordance with the Nationwide Intercompany Arbitration Agreement. The bill allows both parties to use by mutual agreement another arbitration forum on a case-by-case basis. The bill further requires all automobile liability and physical damage insurers doing business in the Commonwealth to be members of the Nationwide Intercompany Arbitration Agreement.

House Bill 888

# State Corporation Commission

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## Prohibition Against Surcharging Law Enforcement Officers

Amends § 38.2-1905 by prohibiting insurers from surcharging a law enforcement officer's personal automobile policy for accidents occurring in the course of the insured's employment as long as the insured was driving a vehicle provided by the law enforcement agency and was engaged in a law enforcement activity at the time of the accident. Reference is made to § 9-169 of the Code of Virginia, which defines the term "law enforcement officer."

House Bill 1368

## Credit Involuntary Unemployment Insurance

Amends § 38.2-233 (credit involuntary unemployment insurance), which was enacted last year. The amended language permits the disclosure requirements of § 38.2-233 and the disclosure requirements of § 38.2-3735 (credit life and credit accident and sickness insurance) to be disclosed together in a form approved by the Commission. The bill also allows application and enrollment forms for credit involuntary unemployment insurance and credit life and credit accident and sickness insurance to be combined into one form.

Senate Bill 451

## Civil Liability to Cities and Volunteer Rescue Squads

Amends Title 15.1 of the Code of Virginia by allowing cities with populations of 350,000 or greater to establish ordinances requiring anyone who is convicted of a violation of § 18.2-266 (driving a motor vehicle, engine or train while intoxicated) or § 29.1-738 (operating a boat while intoxicated), or a similar ordinance, to be civilly liable to the city or volunteer rescue squad, or both, if such impairment is the proximate cause of an accident requiring an emergency response. The bill caps such civil liability at \$1,000 and does not prohibit bodily injury and property damage liability policies from providing coverage for such liability.

## LIFE AND HEALTH INSURANCE

House Bill 240

## Mandated Optional Benefit for Treatment of Breast Cancer by Dose - Intensive Chemotherapy, Autologous Bone Marrow Transplants or Stem Cell Transplants

Amends § 38.2-4319 and adds § 38.2-3418.2 to require insurers, corporations issuing subscription contracts, and health maintenance organizations to offer and make available coverage for the treatment of breast cancer by dose-intensive chemotherapy or autologous bone marrow transplants or stem cell transplants when performed pursuant to protocols approved by the institutional review board of any United States medical teaching college

including, but not limited to National Cancer Institute protocols that have been favorably reviewed and utilized by hematologists or oncologists experienced in dose-intensive chemotherapy or autologous bone marrow transplants or stem cell transplants.

The bill applies to individual and to group policies and contracts, and will be applicable to contracts delivered, issued for delivery or renewed after January 1, 1995. The coverage is not to be subject to any greater deductible or copayment than any covered service. However, coverage with a deductible different than that applicable to any other coverage may also be made available as an option. The provisions of this section do not apply to short-term travel, accident only, limited or specified disease policies, or to short-term nonrenewable policies of six months or less.

Insurers subject to the reporting requirements of § 38.2-3419.1 and Regulation No. 38, Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers, should take note that this new mandated option will be included in the reporting requirements commencing with calendar year 1995.

House Bill 572

## Credit Life and Credit Accident and Sickness Insurance

Amends § 38.2-3737 to provide that a contract of insurance may be made or effectuated in connection with a creditor regulated by Chapter 4.01 of Title 6.1 (The Virginia Credit Union Act of the Banking and Finance Title) or 12 U.S.C. § 1751 et seq., and a debtor (i) of lawful age, (ii) competent to contract, and (iii) a member of the creditor without complying with the requirement in subsection A that the debtor applies for the insurance in writing on a form approved by the Commission. The following conditions must be met: 1) the credit transaction and solicitation for such insurance is effected by mail, telephone or other electronic means; 2) the purchase of the credit insurance is not required by the creditor and is not a factor in granting the credit; 3) within three business days after the credit transaction, the creditor or insurer sends the debtor an application or enrollment form approved by the Commission. Attached or included must be a notice that unless the debtor signs and mails the completed application or enrollment form to the creditor within 45 days after the credit transaction, the coverage will be void from the beginning; and 4) in the event the debtor does not transmit the completed and signed application or enrollment request to the creditor within the time specified in 3) above, the full premium charged for the insurance will be returned to or credited to the account of the debtor, and written notice will be sent to the debtor within 15 days of the date the policy or certificate is canceled.

House Bill 840

## Pharmacy and Ancillary Services Benefits

Adds §§ 38.2-3407.2, 38.2-3407.3, 38.2-4209.1, 38.2-4209.2, 38.2-4312.1 and 38.2-4312.2 to provide that no insurer or health services plan proposing to issue preferred provider (PPO) policies or contracts, and no health maintenance organization (HMO) shall prohibit any person from receiving pharmacy benefits under the policies or contracts from the pharmacy of his choice, or ancillary services benefits under the policies or contracts from the ancillary services provider of his choice. The right of selection extends to and includes pharmacies and ancillary services providers that are non-preferred providers in the PPO or nonparticipating providers in the HMO, but who agree to accept reimbursement for their services at rates applicable to pharmacies and ancillary services providers that are preferred providers in the PPO or participating providers in the HMO. The bill includes an exception in the HMO chapter, exempting any health care plan whose terms require exclusive utilization of pharmacies or ancillary services providers wholly owned and operated by the HMO providing the health care plan. The bill also provides that the Commission has no authority to adjudicate controversies arising out of the six code sections created by this bill.

The bill requires that no insurer, health services plan or HMO is to impose on any person receiving pharmaceutical or ancillary services benefits furnished under a PPO policy or contract or an HMO contract any copayment, fee or condition that is not equally imposed on all individuals in the same benefit category, whether or not the benefits are furnished by non-preferred or nonparticipating providers. Further, no insurer, health services plan or HMO is to impose any monetary penalty that would affect or influence a choice of pharmacy or ancillary services provider or reduce the allowable reimbursement for pharmacy or ancillary services for non-preferred or nonparticipating pharmacies or ancillary services providers.

House Bill 1057

## Coverage for Child Support and Payments Involving Medicaid

Amends and reenacts §§ 38.2-325.2, 38.2-3411.2, 38.2-4214 and 38.2-4319 and adds §§ 38.2-508.3, 38.2-3405.1 and 38.2-3407.2 to provide that insurers, including group health plans as defined in § 607 (1) of the Employee Retirement Income Security Act of 1974 (ERISA), health services plans, service benefits plans and health maintenance organizations (HMOs) are prohibited from denying enrollment or not making benefit payments to an individual because the individual is eligible for medical assistance. The bill also provides that the Department of Medical Assistance Services (DMAS) is the payer of last resort and the Commonwealth acquires the rights of individuals to payments from third parties if it has made payments for medical assistance (Medicaid). The bill prohibits considering a person's eligibility for Medicaid when considering whether an individual is eligible for

coverage under an individual or group accident and sickness policy, health services plan or HMO contract. The bill entitles DMAS to direct reimbursement under an accident and sickness policy, health services plan or HMO contract when DMAS has paid for services or items covered under such policy, plan or contract. The bill also prohibits insurers, health services plans or HMOs from imposing requirements on DMAS, or any agency that has acquired the rights of an individual for Medicaid, that are different from requirements for any other covered individual.

The bill also prohibits insurers, health services plans, or HMOs from refusing to enroll a child under a parent's coverage because (i) the child was born out of wedlock; (ii) the child is not claimed as a dependent on the parent's federal income tax return; or (iii) the child does not reside with the parent or in the insurer's, health services plan's or HMO's service area. The bill also amends § 38.2-3411.2, which mandates coverage for adoptive children, to prohibit insurers, health services plans or HMOs from restricting coverage for a child adopted or placed for adoption solely because of a pre-existing condition.

The changes that this bill addresses are required by federal legislation (OBRA '93).

House Bill 1344

## Accident and Sickness Insurance: Small Employer Market Reform

Amends § 38.2-3430, the sunset provision of the limited mandated benefit policies article, which was enacted as House Bill 2353 during the 1993 session of the Virginia General Assembly. The 1994 bill provides that the limited mandated benefit article will not expire until January 1, 1995. The bill also changes the effective date of last year's House Bill 2353 to July 1, 1994. (Emergency Legislation - Effective March 31, 1994)

House Bill 1345

## Accident and Sickness Insurance: Small Employer Market Reform

Incorporates significant and extensive technical, clarifying and substantive changes to the small employer market reform legislation introduced last year. Last year's House Bill 2353 established two guaranteed issue products and modified community rating in the 2-25 employees group health insurance market.

Recipients of this letter are strongly advised to obtain a copy of this bill or review the advance laws provided by NILS Publishing Company as soon as possible so as to begin preparations for compliance.

Senate Bill 235

# State Corporation Commission

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## Accident and Sickness Insurance: Exclusion of Workers' Compensation-covered Medical Conditions

Amends § 38.2-3405. The bill provides that when benefits which are paid or payable under workers' compensation are excluded from coverage under an accident and sickness policy or subscription contract or health services plan, the exclusion shall not apply if (i) an award of the Workers' Compensation Commission (WCC) pursuant to § 65.2-704 denies compensation benefits relating to the medical condition and no request is made for a review by the WCC of such award within the time prescribed by § 65.2-705; or (ii) an award of the WCC, after review by the full WCC pursuant to § 65.2-705 denies compensation benefits relating to such medical condition. After entry of an award by the WCC under (i) or (ii) above, the insurer shall immediately provide coverage for the medical condition to the extent it would normally be covered under the policy, contract or plan. If on appeal to the Court of Appeals or the Supreme Court of Virginia, the medical condition is held to be compensable under the Virginia Workers' Compensation Act, the issuer of such policy, contract or plan may recover from the employer or workers' compensation insurer the costs of coverage for medical conditions found to be compensable under the Act.

Senate Bill 403

## Accident and Sickness Insurance: Coverage for Certain Prescription Drugs

Adds § 38.2-3407.2 and amends §§ 38.2-4214 and 38.2-4319. Applies to each (i) insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical or major medical coverage on an expense incurred basis; (ii) corporation providing individual or group accident and sickness subscription contracts, and (iii) health maintenance organization providing a health care plan or health care services, to the extent that such policies, contracts or plans provide coverage for prescription drugs, whether on an inpatient basis, outpatient basis, or both. The bill requires that any policy, contract, plan, certificate, or evidence of coverage issued in connection with such a policy, contract or plan shall provide that such benefits will not be denied for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, provided the drug has been recognized as safe and effective for treatment of that specific type of cancer in any of the following standard reference compendia: 1) The American Medical Association Drug Evaluations; 2) The American Hospital Formulary Service Drug Information; or 3) The United States Pharmacopoeia Dispensing Information. The bill is applicable to contracts, policies, or plans delivered, issued for delivery or renewed in Virginia or and after July 1, 1994.

Senate Bill 480

## Copayment and Explanation of Benefits

Amends §§ 38.2-514, 38.2-4214 and 38.2-4319, and creates §§ 38.2-3407.2 and 38.2-3407.3 to prohibit any person from providing to an insured an explanation of benefits (EOB - a term defined in the bill) that does not clearly and accurately disclose the method of benefit calculation and the actual amount of payment to the provider. EOBs must clearly and accurately establish the benefits payable under the contract and must be filed with the Bureau for approval, subject to either § 38.2-316 or § 38.2-4306. The bill provides that the Commission may issue regulations to set standards for the accuracy and clarity of information presented on an EOB. The bill also provides that if a contract requires the payment of a specified percentage of the cost of covered services, the insurer, health services plan or HMO must calculate the amount payable based on the total amount actually paid to the provider of the services. Each claim payment not in compliance with this section will be considered a separate and distinct violation punishable under § 38.2-218 of the Code of Virginia.

Senate Bill 552

## Accident and Sickness Insurance: Participation of Podiatrists

Amends §§ 38.2-4214 and 38.2-4319 and adds § 38.2-3407.2 to provide that a Podiatrist cannot be excluded from participating in a preferred provider plan (PPO) issued by an insurer or health services plan or from participating in an HMO solely because the PPO or HMO requires that participating providers have active medical staff privileges or admitting privileges at specified hospitals, provided that the Podiatrist has a delineation of privileges that enables him to perform the types of services that are covered by the PPO or HMO at the designated hospital. The bill specifies that the State Corporation Commission has no jurisdiction to adjudicate controversies arising out of this section.

## FINANCIAL REGULATION

House Bill 337

## Workers' Compensation: Group Self-Insurance Associations

Amends § 65.2-802 to enable group self-insurance associations to pool their liabilities for workers' compensation benefits in other jurisdictions. The amendment will allow group self-insurance associations licensed by the Commission to pay workers' compensation benefits on claims filed outside of Virginia, but only for employees otherwise eligible for workers' compensation coverage under Virginia law.

House Bill 646

## Insurance; Underwriters

Amends §§ 38.2-1316.2 and 38.2-4811 to recognize the underwriters at Lloyds, London, or other similarly structured group including incorporated and individual unincorporated underwriters, for purposes of establishing credit for reinsurance pursuant to § 38.2-1316.2 or placing surplus lines coverage with an unlicensed carrier pursuant to § 38.2-4811.

House Bill 1195

## Accident and Sickness Insurance; Conversion of a Domestic Mutual Insurer to a Stock Insurer

Amends § 38.2-4229.1 to enable a nonstock corporation licensed as a health services plan to offer the statute's requisite open enrollment program directly or through a subsidiary notwithstanding its conversion to a domestic mutual insurer and also regardless of its subsequent conversion to a stock insurer. The bill also prescribes a premium tax schedule applicable to the resulting stock insurance company and its subsidiaries.

House Bill 1223

## Workers' Compensation; Burden of Proof

Amends § 65.2-1006 to prohibit any employer which self-insures its workers' compensation coverage from willfully withholding information from or knowingly providing false or misleading information to the Workers' Compensation Commission regarding the employer's payroll for purposes of calculating the payroll tax required of employers.

Senate Bill 100

## Financial Regulation of Insurers

Amends several sections of Title 38.2 of the Code of Virginia to ensure the Commission's ability to regulate insurer solvency effectively. The bill:

- amends § 38.2-1300 making clear that the filing of the annual statement shall be on a form developed by the National Association of Insurance Commissioners (NAIC) unless otherwise prescribed by the Commission and also amends § 38.2-1301 to specify that the Commission may require that quarterly and other financial reports be filed with it and the NAIC in a machine-readable format.
- adds § 38.2-1301.1 to require disclosure of material transactions, including the acquisition and disposition of assets, and matters pertinent to certain reinsurance transactions. This change is based on the NAIC Disclosure of Material Transactions Model Act. Section 38.2-4123 is also amended so that these disclosure provisions are applicable also to fraternal benefit societies.

- amends §§ 38.2-1306 and 38.2-1306.1, which deal with confidentiality and the Commission's responsibility to make available public financial statements. The amendments will provide a more flexible framework for maintaining the confidentiality of special reports, while continuing to recognize that annual and quarterly financial statements filed by insurers are open to public inspection.

- amends § 38.2-1320.1 to provide that examination reports shall be furnished to persons examined within ninety days following completion of the examination. This is the time frame established in the NAIC Model Law on Examinations; sixty days is recited in the current statute.

- amends Article 5 of Chapter 13 of Title 38.2 to provide a new method for valuing subsidiary investments. This new valuation method takes into account all funds invested in certain subsidiaries, not just the value of admissible assets, when calculating value for the purpose of determining a threshold of materiality for regulatory approval of affiliate investments.

- amends §§ 38.2-1846, 38.2-1855, 38.2-1858 and 38.2-1863 to bring Virginia's Reinsurance Intermediary and Managing General Agents acts into compliance with the most current revisions to the accreditation-mandated model acts of the NAIC on these topics.

Senate Bill 134

## Financial Regulation of Insurers

Amends several general financial regulation provisions of Title 38.2:

- amends §§ 38.2-1034 and 38.2-1225 dealing with surplus notes thereby making Virginia's language consistent with the NAIC Accounting Practices and Procedures Manual, an authoritative source for statutory accounting.
- amends § 38.2-1314, the loss and claims reserves section of Title 38.2, to establish the same non-specific additional reserve requirements for property and casualty insurers that the Code of Virginia already requires of life and health insurers.
- amends § 38.2-1401 to clarify the definition of an admitted asset used to apply the investment restrictions on insurer investments as provided in Chapter 14 of Title 38.2.
- amends §§ 38.2-4222 and 38.2-4517 to authorize the collection of a \$500 fee from those seeking licenses as health, dental or optometric services plans. This latter change will ensure that health, dental and optometric services plans pay the same licensing fees as other

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insurers and health maintenance organizations.

Senate Bill 225

## Legal Services Plans

Amends Chapter 44 of Title 38.2 to define more clearly the characteristics of a legal services plan and the persons providing services through a legal services organization. The amendments require that the plan be incorporated. They also clarify the definitions and roles of participating attorneys and law firms and establish the Commission's authority to issue corrective action orders for legal services plans in hazardous financial condition and to suspend or revoke their licenses if appropriate.

Senate Bill 599

## Workers' Compensation; Group Self-Insurance Associations

Amends subsections D and E of § 65.2-802 to authorize the purchase of reinsurance by a group self-insurance association. The bill provides that the Commission may require that a group self-insurance association purchase excess insurance or cede reinsurance on a specific or aggregate of loss basis as appropriate. A group self-insurance association entering into a reinsurance transaction shall be deemed an insurer for purposes of the transaction and shall be subject to certain provisions of Chapter 13 of Title 38.2.

## MISCELLANEOUS

Senate Bill 83

## Continuing Education Requirements

Amends §§ 38.2-1866, 38.2-1868, 38.2-1869, 38.2-1871 and 38.2-1874 of Chapter 18 of Title 38.2 of the Code of Virginia to clarify many of the provisions of the continuing education requirements that were passed in 1993. Revision of subsection B of § 38.2-1866 clarifies that the law and regulation course requirement is two hours per biennium (total), and that it may cover relevant laws and regulations of any kind applicable in Virginia. Subsection A of § 38.2-1869 clarifies that the Virginia Insurance Continuing Education Advisory Board (Board) may require evidence of exemption from the requirements of this article. Subsection B of § 38.2-1869 clarifies that the requirements apply to residents and non-residents. The age 65 exemption is also clarified by amendment to subdivision 3 of subsection B of § 38.2-1871 and the immunity of Board members from personal liability is also clarified in subsection E of § 38.2-1874. (Emergency Legislation - Effective April 2, 1994)

Insurers are urged to remind all of their representatives licensed in Virginia that the first biennial compliance period for continuing education (CE) expires on December 31, 1994. Agents failing to complete the educational

requirements by that date will subsequently have their license authority terminated for a minimum of 90 days. Please note that the CE program is NOT administered by the Bureau of Insurance. Course and sponsor approvals, course completion certificates, proof of compliance with home state CE requirements, etc. are handled by INSURANCE TESTING CORPORATION (ITC) on behalf of the Board. For further information on Virginia's CE requirements, contact ITC at 1-800-482-2366.

Senate Bill 204

## Regulation and Administration of Insurance

Amends various sections of Title 38.2 of the Code of Virginia to provide technical administrative modifications necessary for administration of the insurance laws. Some of these amendments are:

- Amendments are made to recognize that modified guaranteed life and modified guaranteed annuities are classes of insurance that life insurers may be authorized to write in Virginia. (Amends §§ 38.2-135 and 38.2-3100)
- Several amendments are made to § 38.2-316: (i) clarifying the Commission's authority as to the approval/disapproval of certificates of group insurance contracts; (ii) providing specific authority for the Commission to promulgate rules and regulations setting standards for policy and other form submissions; and (iii) adding a number of policy types to the listing of policy types subject to filing requirements. (Amends § 38.2-316)
- An amendment is made prescribing the type of annual statement blank form foreign insurers are required to utilize. (Amends § 38.2-1303)
- Amendments are made to Chapter 18 correcting a reference to limited liability companies and adding an inadvertently omitted reference to the credit involuntary unemployment line of insurance so that persons selling this coverage must be licensed as Property and Casualty agents. (Amends § 38.2-1800)
- An amendment is made to facilitate the approval process for the broadening of automobile insurance coverage by deleting the requirement that forms be approved by Administrative Order. (Amends § 38.2-2223)
- An amendment is made to remove an obsolete reference and to include the proper reference to Article 3.1 of Chapter 13. (Amends § 38.2-2529)
- An amendment is made to allow the Commission to modify Insurance Regulation No. 38, Rules Governing the Reporting of Cost and Utilization Data Relating to Mandated Benefits and Mandated Providers, by exempting more insurers from the annual reporting

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requirement. (Amends § 38.2-3419.1)

- An amendment is made to authorize the Commission to promulgate rules and regulations regarding coordination of benefits. (Amends § 38.2-3543.1)

Senate Bill 250

## Bail Bond Agents

Amends Chapter 18 of Title 38.2 by allowing individuals or agencies to obtain a restricted license as a bail bond agent. Currently, such agents are required to obtain a full Property and Casualty license. The new law creates a license type that is exempt from the requirement for individuals of completing a 45 classroom hour study course and taking a written examination, and will also be exempt from Virginia's continuing education requirements. Bail bond agents are defined to mean agents licensed in the Commonwealth for the sole purpose of writing appearance bonds as surety, as defined in subdivision 3 of § 38.2-121 of the Code of Virginia.

V.A.R. Doc. No. R94-1165; Filed August 1, 1994, 4:24 p.m.

AT RICHMOND, JULY 20, 1994

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS940104

Ex Parte, In re: Determination of competition as an effective regulator of rates pursuant to Virginia Code § 38.2-1905.1.E.

## ORDER SCHEDULING HEARING

WHEREAS, pursuant to Virginia Code §§ 38.2-1905.1 and 38.2-1905.2, the Commission, in December, 1993, submitted its report to the General Assembly and therein (i) established May 1, 1994 as the filing deadline for the 1994 supplemental reports and (ii) designated certain lines and subclassifications of insurance for which the Commission has reasonable cause to believe that competition may not be an effective regulator of the rates charged. The designated lines and subclassifications of insurance are set forth in Schedule A hereto, which is attached hereto and hereby made a part of this order;

WHEREAS, pursuant to an order in Case No. INS940014 dated February 9, 1994, the Commission adopted an amended reporting form for the 1994 supplemental reports to be filed with the Commission's Bureau of Insurance by licensed insurers not later than the aforesaid date established by the Commission in its aforesaid report to the General Assembly; and

WHEREAS, Virginia Code § 38.2-1905.1.E. provides, inter alia, that the lines and subclassifications designated by the Commission in its report to the General Assembly shall be reviewed by the Commission for the purpose of determining whether competition is an effective regulator of rates for each line or subclassification so designated and that the Commission shall hold a hearing or hearings for such purpose not later than September 30th of the year immediately following the year the report or reports are submitted to the General Assembly pursuant to Virginia Code § 38.2-1905.1.E.,

IT IS ORDERED, that a hearing shall be conducted by the Commission at 11:00 a.m. on September 13, 1994 in its Courtroom, Tyler Building, Second Floor, 1300 East Main Street, Richmond, Virginia, at which time and place all interested parties may appear and be heard in this matter.

IT IS FURTHER ORDERED that the Commission's staff and all other persons who expect to participate in this matter by presenting witnesses at the hearing scheduled herein, shall cause to be filed with the Clerk of the Commission, for the use of the Commission, no later than September 2, 1994, fifteen (15) copies of the testimony and exhibits of each of their witnesses. Copies of such testimony and exhibits shall be available to interested parties through the Clerk of the Commission, Document Control Center, upon payment of the appropriate copying charges.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Honorable James A. Gilmore, Attorney General of Virginia, in care of Gail D. Jaspen, Senior Assistant Attorney General, Office of the Attorney General, 101 North Eighth Street, Richmond, Virginia 23219; Peter B. Smith, Senior Counsel, Office of General Counsel, State Corporation Commission; and the Bureau of Insurance in care of Mary M. Bannister, Deputy Commissioner, who shall forthwith cause a copy of this order and the attachment hereto to be sent to all insurers licensed to transact the lines and subclassifications of insurance set forth in said Attachment A and all rate service organizations licensed pursuant to Chapter 19 of Title 38.2 of the Code of Virginia.

Schedule A

LINES AND SUBCLASSIFICATIONS OF INSURANCE  
DESIGNATED IN THE STATE CORPORATION  
COMMISSION 1993 REPORT TO THE VIRGINIA  
GENERAL ASSEMBLY PURSUANT TO VIRGINIA  
CODE § 38.2-1905.1.B.

Architects and Engineers Professional Liability

Commercial Contractors Liability  
(including Asbestos Abatement)

Daycare Liability

Environmental Impairment Liability

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(including Underground Tanks)  
Insurance Agents Professional Liability  
Landfill Liability  
Lawyers Professional Liability  
Medical Professional Liability  
Municipal Liability, including:  
Law Enforcement Agencies  
Public Housing  
Public Officials Errors & Omissions  
School Board Errors & Omissions  
Sewage Treatment Plants  
Products and Completed Operations Liability  
Real Estate Agents Professional Liability  
Volunteer Fire Departments and Rescue Squads  
Liability  
Water Treatment Plants Liability

V.A.R. Doc. No. R94-1144; Filed July 21, 1994, 3:01 p.m.

AT RICHMOND, JULY 20, 1994

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE930054

Ex Parte. In re: Investigation of  
the rules governing electric  
cooperative rate cases and rate  
regulation of electric cooperatives

## ORDER SETTING HEARING

On March 28, 1994, the State Corporation Commission ("Commission") issued an Order inviting comments and requests for hearing on the Commission Staff's February 18, 1994 Report recommending the repeal of the Commission's current rules governing electric cooperative rate applications and the substitution of new revised rules. In response to this Order, Loral Federal Systems Corporation ("Loral") and Luck Stone Corporation ("Luck") filed comments and requested a hearing wherein evidence could be presented. In their joint comments, among other things, Loral and Luck maintain that a 30-day suspension period for rate increases is unacceptable. They assert that ratepayers should not be expected to pay the full amount of projected cost increases before electric cooperative costs are investigated and evaluated by the Commission. They maintain that the original threshold tests once applied to investor-owned utilities to determine

whether expedited rate increases are warranted should be applied to electric cooperatives in order to permit the Commission to determine if the utility needs rate relief in the first instance.

Bear Island Paper Company ("Bear Island") filed comments wherein it noted that two basic concerns addressed in its December 15, 1993 letter to the Commission's Office of General Counsel were favorably addressed in the proposed rules accompanying the Staff's Report. Bear Island did not request a hearing on the proposed rules.

A&N Electric Cooperative, BARC Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Inc., Northern Virginia Electric Cooperative, Powell Valley Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, Inc., and the Virginia, Maryland, and Delaware Association of Electric Cooperatives (hereinafter collectively referred to as "the Cooperatives") filed comments addressing various parts of the Staff's February 18, 1994 Report. Among other things, these comments, focusing on the expedited rate process, assert that the Staff's proposed rules fail to create a clear, streamlined ratemaking process. The Cooperatives did not request a hearing but asked the Commission to adopt their alternative proposals as the clearest, most efficient means by which to streamline expedited cooperative rate case proceedings, or, in the alternative, to reject Staff's proposals and maintain current Cooperative ratemaking procedures.

Those submitting comments regarding the Staff's Report raise important issues, many of which require a factual determination and merit further development through an evidentiary hearing. Therefore, in consideration of the foregoing, we are of the opinion and find that this matter should be set for hearing before a Hearing Examiner; that the Staff should file testimony addressing its February 18, 1994 Report, any further proposals or revisions to the Report and accompanying rules, and addressing the comments received in response to the Report; and that those filing comments should have an opportunity to present testimony addressing the Staff's Report and testimony and the comments received in response to said Report.

Accordingly, IT IS ORDERED:

(1) That, as provided by Virginia Code § 12.1-31 and Rule 7:1 of the Commission's Rules of Practice and Procedure ("Rule ..."), a Hearing Examiner be assigned to conduct all further proceedings on behalf of the Commission, concluding with the filing of a final report to the Commission;

(2) That a hearing before a Hearing Examiner is hereby scheduled for November 15, 1994, at 10:00 a.m., in the

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Commission's second floor courtroom located in the Tyler Building, 1300 East Main Street, Richmond, Virginia, for the purpose of receiving evidence relevant to the rule proposals received herein;

(3) That on or before September 13, 1994, the Commission Staff shall file an original and fifteen (15) copies of prefiled direct testimony addressing its Report, any further revisions thereto, and the Comments filed herein, which testimony shall be presented at the hearing to be convened on November 15, 1994;

(4) That on or before August 12, 1994, Loral, Luck, Bear Island, and the Cooperatives shall serve a copy of each of their respective comments on one another;

(5) That on or before October 3, 1994, Loral, Luck, Bear Island, and the Cooperatives may each file with the Clerk of the Commission an original and fifteen (15) copies of the prefiled direct testimony, addressing the Staff's February 18 Report, the comments filed in response to this Report, and the Staff's prefiled direct testimony, that these parties intend to present at the November 15 hearing;

(6) That any person desiring to make a statement at the hearing scheduled herein concerning the Staff's proposals need only appear in the Commission's second floor courtroom at 9:45 a.m. on the day of the hearing and identify himself or herself to the Bailiff as a public witness;

(7) That Rule 6:4, Interrogatories to Parties or Requests for Production of Documents and Things, shall be applied as follows for purposes of this proceeding:

(a) Parties shall serve answers within seven (7) calendar days after receipt of any interrogatories or request for production;

(b) Objections to specified questions shall be served within five (5) days after receipt of the interrogatories or request for production;

(c) Special motions upon the validity of any objection shall be filed within five (5) days after receipt of the objection, otherwise such objections shall be considered sustained; and

(d) Participants and Staff may agree on alternative schedules for serving answers and objections; and

(8) That on or before October 26, 1994, the Staff may file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony and exhibits that it intends to offer in response to the direct testimony and exhibits previously filed and shall serve one (1) copy on the parties to this proceeding. Additional rebuttal evidence may be presented without pre-filing, provided it is in response to evidence which was not prefiled but elicited at the time of the hearing and, provided further, the need

for additional rebuttal evidence is timely addressed by motion during the hearing and leave to present said evidence is granted by the Hearing Examiner.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Edward L. Flippen, Esquire, Mays & Valentine, P.O. Box 1122, Richmond, Virginia 23208-1122; Louis R. Monacell, Esquire, Christian, Barton, Epps, Brent & Chappell, 1200 Mutual Building, 909 East Main Street, Richmond, Virginia 23219-3095; John A. Pirko, Esquire, Miller & Hern, Innsbrook Corporate Center, 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; John Edwards, President and Chief Executive Officer, Old Dominion Electric Cooperative, P.O. Box 2310, Glen Allen, Virginia 23058-2310; the Division of Consumer Counsel, Office of the Attorney General, 101 North 8th Street, 6th Floor, Richmond, Virginia 23219; Jean Ann Fox, President, Virginia Citizens Consumer Council, 114 Coachman Drive, Yorktown, Virginia 23693; Richard D. Cagan, Registered Agent for Rural Virginia, Inc., P.O. Box 9081, Petersburg, Virginia 23906; Peggy S. Kidd, Monticello Area Community Action Agency, 215 East High Street, Charlottesville, Virginia 22902; Margaret Morton, Monticello Area Community Action, P.O. Box 241, Covington, Virginia 22949; Howard L. Scarboro, General Manager, Central Virginia Electric Cooperative, P.O. Box 247, Lovingston, Virginia 22949; and the Commission's Office of General Counsel and Divisions of Public Utility Accounting, Energy Regulation, and Economics and Finance.

V.A.R. Doc. No. R94-1145; Filed July 26, 1994, 4:23 p.m.

AT RICHMOND, JULY 27, 1994

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC940048

Ex Parte, in re: Promulgation of rules pursuant to Virginia Code § 13.1-523 (Securities Act)

## ORDER AMENDING AND ADOPTING RULES

On or about May 12, 1994, the Division of Securities and Retail Franchising mailed to the broker-dealers registered under the Securities Act and to other interested parties summary notice of the contents of a proposed Securities Act Rule (Rule 507), of proposed amendments of existing Securities Act Rules (Rules 300 and 404) and of the opportunity to file comments and request to be heard with respect to any objections to the proposals. In accordance with the Commission's order entered herein on June 2, 1994, similar notice was published in several newspapers in general circulation throughout the Commonwealth. This notice, as well as the text of the proposed changes, also was published in "The Virginia Register of Regulations," Vol. 10, Issue 18, May 30, 1994, pp. 4914-16; 4919-22.

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Several persons filed comments, but no request for a hearing was received.

The Commission, upon consideration of the proposals, the comments filed by interested persons, and the recommendations of the Division, is of the opinion and finds that certain of the proposals should be modified as follows:

Rule 507 ("Test-the-Waters" Exemption): In the last clause of Section G, substitute the word "after" for "from"; in Section K 5, substitute the word "preliminarily" for "preliminary"; in paragraph 2 of the COMMENTS, add a new sentence - "Persons who solicit indications of interest under this Rule must be registered under, or exempted from registration by, the Act as a broker-dealer or as an agent."; add to the COMMENTS a new paragraph 4 - "With respect to Sections D and E of this Rule, the offeror may begin to conduct solicitations of interest once the pre-filing requirements have been satisfied, unless notified otherwise by the Commission. The Commission may at any time notify the offeror not to distribute any Solicitation of Interest Form, script, advertisement, or other material which the Commission believes is in violation of the Act's anti-fraud provisions." - and redesignate paragraphs 4 and 5, respectively, as "5" and "6."

The Commission is further of the opinion and finds that the other proposals should be adopted as noticed. Accordingly, it is

## ORDERED:

(1) That evidence of mailing and publication of notice of proposed Rule 507 and of the proposed amendments of Rules 300 and 404 be filed in this case as Exhibit A;

(2) That proposed Rule 507, as modified, and that the proposed amendments of Rules 300 and 404, a copy of which Rules is attached hereto and made a part hereof, be, and they hereby are, adopted and shall become effective as of August 1, 1994; and

(3) That this matter is dismissed from the docket and the papers herein be placed in the file for ended causes.

AN ATTESTED COPY hereof, including the attachment, shall be sent to each of the following by the Clerk of the Commission: Every person who filed comments in this proceeding; the Commission's Division of Information Resources; Securities Regulation and Law Report, c/o The Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037; and Blue Sky Law Reporter, c/o Commerce Clearing House, Inc., 4025 West Peterson Avenue, Chicago, Illinois 60646.

## ARTICLE III BROKER-DEALER AND AGENT REGULATIONS

### Rule 300 Notice of Civil, Criminal, or Administrative or Arbitrational Action

A. An applicant or a registrant shall notify the Commission:

1. Within thirty (30) calendar days of the date a *any* complaint, *pleading or notice* is served or received giving notice of any civil, criminal or administrative charges *charge or any arbitration proceeding* or a *any* formal order or *of* investigation, including any such charge, *proceeding* or order by a self-regulatory organization registered under the Securities Exchange Act of 1934, against the applicant or registrant which directly or indirectly relates to the registration or sale of securities, or ~~which directly or indirectly relates to the applicant's or registrant's activities~~ *any activity* as a broker-dealer or agent or to any other activity in which a breach of trust is alleged.

2. Within thirty (30) calendar days of the date filed, any answer, reply or response to ~~any the~~ complaint, *pleading or notice* filed as ~~outlined~~ *referred to* in subsection A.1., above.

3. Within thirty (30) calendar days of the date of any decision, order or sanction rendered, or any appeal filed with respect to such decision, *order or sanction*, in regard to ~~any the~~ complaint, *pleading or notice* ~~outlined in~~ *referred to* in subsection A.1., above.

B. ~~One (1) copy of such complaint, answer or reply, decision, order, or sanction shall be filed with the Commission at the time of notification in accordance with A.1., A.2. and A.3. of this Rule. A registrant who is a NASD member broker-dealer or is associated with a NASD member broker-dealer may file the notification required by section A. of this Rule either with the Commission's Division of Securities and Retail Franchising or on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system.~~

C. ~~One (1) copy of any item referred to in subsection A.1, A.2. or A.3., above, shall be filed with the Commission promptly following a request for same.~~

### Rule 404 Requirements for Renewal Applications Filed Pursuant to Code Section 13.1-512

In accordance with Section 13.1-512 of the Act, a registration statement and any renewal thereof relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company as those terms are defined in the Investment Company Act of 1940, shall expire at midnight on the annual date of its effectiveness in Virginia. The effectiveness of such registration statement may be renewed for an additional one year period by filing the ~~following~~ materials described below with the Commission or the Securities Registration Depository, Inc. ("SRD"),

when that facility is available, prior to the expiration date

A. A renewal application filed with the Commission shall contain the following:

1. A facing page of Form U-1.
2. A fee of \$300.00 (make check payable to Treasurer of Virginia).

B. A renewal application filed with the SRD shall be filed on and in compliance with all requirements and forms prescribed by the SRD and shall include a fee of \$300.00 (make check payable to SRD).

Note: Refer to Rule 700 for prospectus filing requirements.

## Rule 507 Solicitations of Interest Prior to the Filing of a Registration Statement

In accordance with Section 13.1-514.1 C of the Act, an offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from the securities registration requirements of the Act if all of the conditions set forth in Sections A through K, below, are satisfied:

A. The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada and is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries.

B. The solicitation of interest is not for a so-called "blind pool" offering or other offering for which the specific business in which to be engaged or property to be acquired cannot be described at the time of the solicitation.

C. It is intended that the security be registered under the Act and that the offering be conducted pursuant to either Regulation A or Rule 504 of Regulation D, as promulgated by the U.S. Securities and Exchange Commission.

D. At least ten (10) business days prior to the initial solicitation of interest under this Rule, the offeror files with the Commission a Solicitation of Interest Form along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published.

E. At least five (5) business days prior to usage, the offeror files with the Commission any amendments to the materials specified in Section D, above, or additional materials to be used to conduct solicitations of interest,

except for materials provided to a particular offeree pursuant to a request by that offeree, which materials shall be filed with the Commission no later than five (5) business days after usage.

F. No Solicitation of Interest Form, script, advertisement or other material which the offeror has been notified by the Commission not to distribute is used to solicit indications of interest.

G. Except for scripted broadcasts and except to the extent necessary to obtain information needed to provide a Solicitation of Interest Form, the offeror does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five (5) calendar days [ from after ] the communication.

H. During the solicitation of interest period, the offeror does not solicit or accept money or a commitment to purchase securities.

I. No sale is made until at least seven (7) calendar days after delivery to the purchaser of a prospectus which is part of a registration statement declared effective under Section 13.1-508 or Section 13.1-510 of the Act.

J. No offer or sale of the security is consummated by any person who is not registered under or exempted from registration by the Act as a broker-dealer or an agent.

K. The offeror does not know, and in the exercise of reasonable care, could not know that any of the issuer's officers, directors, ten percent shareholders or promoters:

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

2. Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

3. Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the U.S. Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

# State Corporation Commission

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4. Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

5. Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or [ ~~preliminary~~ preliminarily ] restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this Section K may act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this Section K is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

L. A failure to comply with a term, condition or requirement of Sections A-K of this Rule will not result in the loss of the exemption from the securities registration requirements of the Act for any offer to a particular individual or entity if the offeror shows:

1. The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
2. The failure to comply was insignificant with respect to the offering as a whole; and
3. A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Sections A-K.

Where an exemption is established only through reliance upon this Section L, the failure to comply shall nonetheless be actionable by the Commission as a violation of the Act, and shall constitute grounds for denying or revoking the exemption as to a specific security or transaction.

M. The offeror shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the securities registration

requirements of the Act, but shall be a violation of the Act, be actionable by the Commission, and constitute grounds for denying or revoking the exemption as to a specific security or transaction.

1. Any published notice or script for broadcast and any printed material delivered apart from the Solicitation of Interest Form must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

a. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

b. NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

c. AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND;

d. THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC AND THE SECURITIES ARE REGISTERED IN THIS STATE; and

e. REGISTRATION OF THE SECURITIES FOR SALE IN THIS STATE IS DEPENDENT ON COMPLIANCE WITH THE SECURITIES LAWS OF VIRGINIA. THEREFORE, THERE CAN BE NO ASSURANCE THAT THE SECURITIES WILL BE REGISTERED FOR SALE IN VIRGINIA.

This requirement shall not apply to the delivery of printed material to a person who has already received a Solicitation of Interest Form with the legends correctly included.

2. All communications with offerees made in reliance on this Rule must cease after a registration statement is filed in this state, and no sale may be made until at least twenty (20) calendar days after the last communication made in reliance on this Rule.

N. Other than the requirements of Section J, above, the Commission may waive any condition of this exemption in writing, upon application by the offeror and good cause having been shown. Neither compliance nor attempted compliance with this Rule, nor the absence of any objection or order by the Commission with respect to any offer of securities undertaken pursuant to this Rule, shall be deemed to be a waiver of any condition of the Rule or

# State Corporation Commission

deemed to be a confirmation by the Commission of the availability of this Rule.

O. Offers made in reliance on this Rule will not result in a violation of Section 13.1-507 of the Act by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

P. Issuers on whose behalf indications of interest are solicited under this Rule may not make offers or sales in reliance on subsection B 7 or B 13 of Section 13.1-514 of the Act until six (6) months after the last communication with an offeree made pursuant to this Rule. "

## COMMENTS:

1. All communications made in reliance on this Rule are subject to the anti-fraud provisions of the Act.

2. Nothing in this Rule is intended to exempt any person from the broker-dealer or agent registration requirements of the Act. [ Persons who solicit interest under this Rule must be registered under, or exempt from registration by, the Act as a broker-dealer or as an agent. ]

3. The Commission may or may not review the materials filed pursuant to this Rule. Materials filed, if reviewed, will be judged under anti-fraud principles. Any discussion in the offering documents of the potential rewards of the investment must be balanced by a discussion of possible risks.

[ 4. With respect to Sections D and E of this Rule, the offeror may begin to conduct solicitations of interest once the pre-filing requirements have been satisfied, unless notified otherwise by the Commission. The Commission may at any time notify the offeror not to distribute any Solicitation of Interest Form, script, advertisement or other material which the Commission believes is in violation of the Act's anti-fraud provisions. ]

[ 4. 5. ] Any offer effected in violation of this Rule may constitute an unlawful offer of an unregistered security for which civil liability attaches under Section 13.1-522 of the Act. Likewise, any misrepresentation or omission may give rise to civil liability.

[ 5. 6. ] Issuers should note that under certain conditions the Commission may refuse to grant effectiveness to any registration statement filed under Section 13.1-508 or Section 13.1-510 of the Act. In that event, sales to prospective Virginia investors solicited under this Rule may not be consummated. Please refer to Section 13.1-513 of the Act, Rule 900, and Rule 402.

NOTE TO USERS: The following form sets forth the minimum informational requirement for soliciting

indications of interest under federal and state securities laws. You may include additional information if you think it necessary or desirable. Remember that any discussion in this document is subject to the anti-fraud provisions of the federal and state securities laws and must thereby be complete. Also, any discussion of potential rewards of the proposed investment must be balanced by a discussion of possible risks. You may alter the graphic presentation of the form in any way as long as the minimum information is clearly presented.

## SOLICITATION OF INTEREST FORM

.....  
NAME OF COMPANY

Street Address of Principal Office:

Company Telephone Number:

Date of Organization:

Amount of the Proposed Offering:

Name of the Chief Executive Officer:

**THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED.**

**NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL THE DELIVERY OF A FINAL OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE COMPANY AND THE OFFERING.**

**AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND.**

**THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC AND THE SECURITIES ARE REGISTERED IN THIS STATE.**

**REGISTRATION OF THE SECURITIES FOR SALE IN THIS STATE IS DEPENDENT ON COMPLIANCE WITH THE SECURITIES LAWS OF VIRGINIA. THEREFORE, THERE CAN BE NO ASSURANCE THAT THE SECURITIES WILL BE REGISTERED FOR SALE IN VIRGINIA.**

This Company:

Has never conducted business operations.

Is in the development stage.

Is currently conducting operations.

# State Corporation Commission

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( ) *Has shown a profit for the last fiscal year.*

( ) *Other (Specify) .....*

## **BUSINESS:**

*1. Describe in general what business the company does or proposes to do, including what products or goods are or will be produced or services that are or will be rendered.*

*2. Describe in general how these products or services are to be produced or rendered and how and when the company intends to carry out its activities.*

## **OFFERING PROCEEDS:**

*3. Describe in general how the company intends to use the proceeds of the proposed offering.*

## **KEY PERSONNEL OF THE COMPANY:**

*4. Provide the following information for all officers and directors or persons occupying similar positions.*

*Name, Title, Office Street Address, Telephone Number, Employment History (Employers, titles and dates of positions held during the past five years), and Education (degrees, schools and dates).*

*(end of form)*

VAR. Doc. No. R94-1161; Filed July 28, 1994, 11:38 a.m.

# MARINE RESOURCES COMMISSION

## MARINE RESOURCES COMMISSION

**NOTICE:** The Marine Resources Commission is exempt from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

**Title of Regulation:** VR 450-01-0079. Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

**Statutory Authority:** §§ 28.2-201, 28.2-204, 28.2-242 and 28.2-243 of the Code of Virginia.

**Effective Date:** July 1, 1994.

### Preamble:

*This regulation describes the procedure and manner for application for registration as a commercial fisherman, the manner and form of mandatory harvest reports by commercial fishermen and others, and exceptions to the registration process and delay requirements as specified in § 28.2-241 of the Code of Virginia. A commercial hook-and-line license is also established.*

VR 450-01-0079. Pertaining to Commercial Fishing and Mandatory Harvest Reporting.

### § 1. Authority, prior regulation, effective date.

A. This regulation is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-204, 28.2-242, and 28.2-243 of the Code of Virginia.

B. This regulation replaces previous regulation VR 450-01-0079 which was promulgated and made effective September 15, 1992 January 1, 1994 .

C. The effective date of this regulation is January 1 July 1, 1994.

### § 2. Purpose.

The purpose of this regulation is to establish the procedures for the registration of commercial fishermen and the manner and form of mandatory harvest reports from fishermen and others. Further, the purpose is to license commercial fishermen using hook-and-line, rod-and-reel, or hand line.

### § 3. Commercial fisherman registration license; exceptions.

A. In accordance with § 28.2-241 C of the Code of Virginia, only persons who hold a valid Commercial Fisherman Registration License may sell, trade, or barter their catch, or give their catch to another, in order that it may be sold, traded, or bartered (hereinafter generally referred to as "sell," "selling," "sale," or "sold" as the context requires). Only these licensees may sell their catches from Virginia tidal waters, regardless of the

method or manner in which caught. Exceptions to the requirement to register as a commercial fisherman for selling catch are authorized for the following persons only:

1. Persons taking menhaden under the authority of licenses issued pursuant to § 28.2-402 of the Code of Virginia.
2. Persons taking diminutive quantities of minnows, used solely for bait for fishing.
3. One agent, who is not registered as a commercial fisherman, may be authorized to possess the registration license of a commercial fisherman in order to serve as a substitute in his absence for fishing the license holder's gear and selling the catch. No more than one person shall be used as an agent at any time. An agent must possess the registration license of the owner when fishing or selling the catch in his behalf.

B. In accordance with § 28.2-241 H of the Code of Virginia, only persons with a valid Commercial Fisherman Registration License may purchase gear licenses. Beginning with licenses for the 1993 calendar year and for all years thereafter, gear licenses will be sold only upon presentation of evidence of a valid Commercial Fisherman Registration License.

Exceptions to the prerequisite requirement are authorized for the following gears only, and under the conditions described below:

1. Menhaden purse seine licenses issued pursuant to § 28.2-402 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.
2. Commercial gear licenses used for recreational purposes and issued pursuant to § 28.2-226.2 of the Code of Virginia may be purchased without holding a Commercial Fisherman Registration License.

C. As provided in § 28.2-243 of the Code of Virginia, the commission may grant exceptions to the two-year delayed registration required under § 4 B of this regulation. Any person requesting an exception shall provide said request in writing to the commission 30 days in advance of the meeting at which the commission will hear the request. Exceptions to the two-year delay may be granted under the following conditions:

1. The applicant for an exception can demonstrate a previous history of fishing a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and
2. The applicant can demonstrate a significant hardship caused by unforeseen circumstances, such as problems associated with health or a call to active military duty. Applicants seeking an exception on the

# Marine Resources Commission

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basis of health problems shall provide to the commission a signed letter from the attending physician verifying the problem.

Further exceptions may be granted to the purchaser of another commercial fisherman's gear only in instances when the seller of the gear holds a Commercial Fisherman Registration License and surrenders that license to the commission at the time the gear is sold.

Exceptions may be granted to an immediate member of his family desiring to continue the fishing business at the time of retirement or death of the registered license holder.

Under no circumstances will any exception be granted solely on the basis of lack of funds.

C. Exceptions to the two-year delay may be granted by the commissioner, if he finds any of the following:

1. The applicant for an exception has demonstrated, to the satisfaction of the commissioner, that the applicant has fished a significant quantity of commercial gear in Virginia waters during at least two of the previous five years; and the applicant can demonstrate, to the satisfaction of the commissioner, that a significant hardship caused by unforeseen circumstances beyond the applicant's control has prevented the applicant from making timely application for registration. The commissioner may require the applicant to provide such documentation as he deems necessary to verify the existence of hardship.

2. The applicant is purchasing another commercial fisherman's gear, and the seller of the gear holds a Commercial Fisherman Registration License and the seller surrenders that license to the commission at the time the gear is sold.

3. An immediate member of the applicant's family, who holds a current registration, has died or is retiring from the commercial fishery and the applicant intends to continue in the fishery.

4. Any applicant denied an exception may appeal the decision to the commission. The applicant shall provide a request to appeal to the commission 30 days in advance of the meeting at which the commission will hear the request. The commission will hear requests at their March, June, September, and December meetings.

5. Under no circumstances will an exception be granted solely on the basis of economic hardship.

## § 4. Registration procedures.

A. Applicants holding a valid Commercial Fisherman Registration License may register during the period December 1 through February 28 of each year as

commercial fishermen as follows:

1. The applicant shall complete an application for a Commercial Fisherman Registration License.

2. The applicant shall mail the completed application and \$150 to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756.

3. The Commercial Fisherman Registration License will be returned to the applicant by mail upon validation of his application.

B. Persons desiring to enter the commercial fishery and those fishermen failing to register as provided in § 4 A may apply only during December, January or February of each year. All such applications shall be for a delayed registration and shall be made as provided below.

1. The applicant shall complete an application for a Commercial Fisherman Registration License by providing his complete name, mailing address, social security number, birth date, weight, height, eye color, hair color, telephone number of residence, and signature.

2. The applicant shall mail the completed application and \$150 to the Virginia Marine Resources Commission, P.O. Box 756, Newport News, Virginia VA 23607-0756 .

3. The Commercial Fisherman Registration License will be returned to the applicant by mail two years after the date of receipt of the application by the commission. Notification of any change in the address of the applicant shall be the responsibility of the applicant.

C. No part of the Commercial Fisherman Registration License fee shall be refundable.

D. The Commercial Fisherman Registration License may be renewed annually during the months of December, January or February. Any person failing to renew his license shall be subject to the delay provision of § 4 B.

## § 5. Commercial hook-and-line license.

A. On or after January 1, 1993, any person desiring to take or catch fish in the tidal waters of Virginia with hook-and-line, rod-and-reel, or hand line and selling such catch shall first purchase a Commercial Hook-and-Line License from the commission or its agent.

B. The fee for the Commercial Hook-and-Line License shall be \$25.

C. A Commercial Fisherman Registration License, as described in § 28.2-241 H of the Code of Virginia, is required prior to the purchase of this license.

# Marine Resources Commission

## § 6. Mandatory harvest reporting.

A. It shall be unlawful for any person holding a Commercial Fisherman Registration License to fail to fully report their catches and related information as set forth in this regulation.

B. It shall be unlawful for any recreational fisherman, charter boat captain, head boat captain, commercial fishing pier operator, or owner of a private boat licensed pursuant to §§ 28.2-302.7 through 28.2-302.9 of the Code of Virginia to fail to report recreational catches upon request to those authorized by the commission.

C. Registered commercial fishermen shall accurately and legibly complete a daily form describing that day's harvest from Virginia tidal waters. The forms used to record daily harvest shall be those provided by the commission or another approved by the commission. Registered commercial fishermen may use more than one form when selling to more than one buyer.

D. Registered commercial fishermen shall submit a monthly catch report to the commission no later than the fifth day of the following month. This report shall be accompanied by the daily catch records described in subsection C of this section. Completed forms shall be mailed or delivered to the commission or other designated locations.

E. The monthly catch report and daily catch records shall include the name and signature of the registered commercial fisherman and his license registration number, buyer or private sale information, date of sale, city or county of landing, water body fished, gear type and amount used, number of hours fished, species harvested, market category, and live weight or processed weight or species harvested. Any information on the price paid for the catch may be voluntarily provided.

F. Registered commercial fishermen not fishing during a calendar year shall so notify the commission no later than February 1 of the following year.

G. Any person licensed as a commercial seafood buyer pursuant to § 28.2-228 of the Code of Virginia shall maintain for a period of one year a copy of each fisherman's daily catch record form for each purchase made. Such records shall be made available upon request to those authorized by the commission.

H. Registered commercial fishermen shall maintain their daily catch records for one year and shall make them available upon request to those authorized by the commission.

I. Registered commercial fishermen and licensed seafood buyers shall allow those authorized by the commission to sample catch and seafood products to obtain biological information for scientific and management purposes only. Such sampling shall be conducted in a manner which does

not hinder normal business operations.

J. The reporting of oyster harvest and transactions shall be made in accordance with VR 450-01-0026 and shall be exempted from the procedures described in this section.

## § 7. Penalty.

In addition to the penalties described by law, any person violating any provision of this regulation may be subject to license suspension or revocation.

VA.R. Doc. No. R94-1163; Filed July 29, 1994, 12:22 p.m.

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Title of Regulation: VR 450-01-0099. Pertaining to the Setting and Mesh Size of Gill Nets.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 1995.

### Preamble:

*This regulation prohibits the setting of any gill net with a stretched-mesh size between 3 3/4 inches and 8 inches within western Chesapeake Bay tributaries of Virginia from January 1 through April 15 of each year.*

VR 450-01-0099. Pertaining to the Setting and Mesh Size of Gill Nets.

### § 1. Authority, effective date.

A. *This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia.*

B. *The effective date of this regulation is January 1, 1995.*

### § 2. Purpose.

*The purpose of this regulation is to reduce the out-of-season by-catch of American shad and striped bass, thereby reducing injuries and mortalities to these two species.*

### § 3. Gill net mesh sizes prohibited.

*From January 1 through April 15 of each year, it shall be unlawful for any person to place, set, or fish any gill net with a stretched mesh size between 3 3/4 inches and 8 inches within the restricted areas defined in § 4 of this regulation.*

### § 4. Restricted areas.

*For purposes of this regulation, restricted areas are*

# Marine Resources Commission

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defined as follows:

1. In James River, those tidal waters upstream of a line connecting Willoughby Spit and Old Point Comfort;
2. In Back River, those tidal waters upstream of a line connecting Factory Point and Plumtree Point;
3. In Poquoson River, those tidal waters upstream of a line connecting Marsh Point and Tue Point;
4. In York River, those tidal waters upstream of a line connecting Tue Point and Guinea Marshes;
5. In Mobjack Bay, those tidal waters upstream of a line connecting Guinea Marshes and New Point Comfort;
6. In Milford Haven, those tidal waters upstream of a line connecting Rigby Island and Sandy Point;
7. In Piankatank River, those tidal waters upstream of a line connecting Cherry Point and Stingray Point; and
8. In Rappahannock River, those tidal waters upstream of a line connecting Stingray Point to Windmill Point.

## § 5. Penalty.

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this regulation shall be guilty of a Class 3 misdemeanor.

V.A.R. Doc. No. R94-1164; Filed July 29, 1994, 12:23 p.m.

# GOVERNOR

## EXECUTIVE MEMORANDUM 8-94

### PURCHASE OF RECYCLED GOODS

#### Purpose:

This memorandum sets forth statewide policy to increase the use of recycled goods and to implement a purchase program to stimulate the market for recycled goods.

#### Applicability:

This memorandum applies to all executive branch agencies, institutions, and employees.

#### Effective Date:

July 1, 1994

#### General Policy:

Recycling is one of three elements of the Commonwealth's conservation policy. State employees should first seek to reduce the need for purchased goods by eliminating waste. Second, state agencies, institutions, and employees should reuse goods and supplies whenever possible. For example, supplies such as paper clips and file folders can be reused again and again, resulting in cumulative savings. After reduction and reuse, the emphasis must be on recycling.

The Commonwealth seeks to promote the efficient use of our natural resources by promoting the use of recycled goods. By purchasing recycled goods whenever economically feasible, agencies of the Commonwealth will demonstrate a commitment toward effective recycling practices in Virginia.

#### Requirements:

By virtue of the authority vested in me under the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.1-41.1 of the Code of Virginia, I hereby direct all state agencies participating in the Virginia Recycling Markets Development Council, and all other state agencies and institutions, to carry out their legally established duties in a manner consistent with the policies set forth in this memorandum as well as those set out in Sections 9-145.47, 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 11-41.01, 11-47, 11-47.2, and 11-47.01 of the Code of Virginia.

#### I. Responsibility of the Department of Environmental Quality:

With advice from the Virginia Recycling Markets Development Council, the Department of Environmental Quality (DEQ) shall prepare a

definition for recycled products, and advise the Department of General Services concerning the designation of these products. DEQ shall endeavor, in cooperation with the Department of General Services, to heighten state agency awareness of the benefits of using recycled products.

#### II. Responsibilities of the Department of General Services:

The Department of General Services shall:

A. Ensure the Commonwealth's procurement guidelines for state agencies promote the use of recycled products;

B. Promote the Commonwealth's interest in the use of recycled products to vendors; and

C. Make agencies aware of the availability of recycled products, including those which use post-consumer and other recovered material processed by Virginia-based companies.

#### III. Responsibilities of All State Agencies:

To the greatest extent possible, all state agencies shall adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

This Executive Memorandum rescinds Executive Memorandum 6-93, issued by Governor Lawrence Douglas Wilder on December 16, 1993.

This Executive Memorandum shall remain in full force and effect unless amended or rescinded by further executive action.

/s/ George Allen  
Governor

V.A.R. Doc. No. R94-1146; Filed July 26, 1994, 4:23 p.m.

## EXECUTIVE MEMORANDUM 10-94

### EXECUTION VIEWING BY VICTIM'S FAMILY MEMBERS

#### Purpose:

This memorandum establishes a policy that close family members of the victim of a capital murder should, whenever feasible, be afforded the opportunity to witness the execution of the person who murdered their loved one. This policy is adopted with the recognition that witnessing such an execution may have unforeseen consequences and impact for the family members involved, and thus is neither to be encouraged or discouraged. This memorandum establishes the procedures and conditions under which close family members may witness the

# Governor

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execution of the murderer of their family member.

## Definitions:

For purposes of this Executive Memorandum, the term "family member" shall be deemed to include the following relatives of the victim:

1. Spouse at the time of the murder;
2. Mother or father, whether by birth, adoption or marriage;
3. Sisters or brothers, full or half;
4. Children, whether by birth, adoption or marriage;
5. Guardian or person standing in loco parentis;
6. Any other relatives chosen by any of the above-listed family members.

## Applicability:

This memorandum supersedes any existing policies on this subject, written or verbal, that may have been created by any executive branch agency or official.

Effective Date: July 1, 1994

## Procedures and Conditions for Viewing Executions:

Because of limited space and facilities and in consideration of other factors, the following procedures and conditions shall be observed by the Department of Corrections (hereinafter the "Department") in implementing the policy contained herein:

1. No person under the age of eighteen (18) years of age shall be allowed to witness an execution.
2. The Department shall ensure that family members are physically separated from other witnesses and that there is no opportunity for verbal or visual contact between family members and the individual being executed or other witnesses.
3. Taking into consideration available space and facilities, the Department shall determine a maximum number of family members who will be allowed to witness an execution.
4. In the case of an execution of a murderer of multiple victims, the Department shall allocate as equally as practicable the spaces available to the family members of each victim for which a trial resulted in a conviction of capital murder.
5. The Department shall require each family member to sign an appropriate release of liability on the part of the Commonwealth prior to witnessing the

execution.

6. The Department shall establish a requirement for a written application to witness the execution to be submitted to the Department by the family members in sufficient time for the Department to act upon the application.

7. In a case in which more family members apply than the facilities can accommodate, the family members shall decide among themselves who will witness the execution. The Secretary of Public Safety shall have discretion to deny permission to all family members in the event they are unable to decide who will witness the execution.

8. At all times, the Department shall reserve the right to remove immediately any family member who becomes disruptive of the proceedings.

This Executive Memorandum shall remain in full force and effect unless superseded or rescinded by further executive action.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1147; Filed July 26, 1994, 4:25 p.m.

## EXECUTIVE ORDER NUMBER FIVE (94) (REVISED)

### CREATING THE COMMISSION ON PAROLE ABOLITION AND SENTENCING REFORM

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and, including, but not limited to Section 2.1-51.36 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby create the Commission on Parole Abolition and Sentencing Reform.

The Commission is classified as a gubernatorial advisory commission in accordance with Sections 2.1-51.35 and 9-6.25 of the Code of Virginia.

The Commission shall have the responsibility to advise the Governor on all matters related to the abolition of parole and the adoption and implementation of a truth-in-sentencing system for the Commonwealth of Virginia. The Commission's specific responsibilities shall be:

1. To examine relevant data regarding sentencing systems, including truth-in-sentencing, sentencing guidelines, and similar systems in other states and at the federal level, for the purpose of recommending to the Governor an effective and workable plan for abolishing parole and instituting truth-in-sentencing in Virginia;

2. To identify those criminal offenses for which increased incarceration is necessary to protect public safety, including violent offenses and offenses by recidivists, and to provide for such increases as part of the truth-in-sentencing plan recommended to the Governor;

3. To evaluate the feasibility of alternatives to incarceration for certain non-violent offenders, and to develop standard criteria and procedures for use of such alternative punishments;

4. To recommend, as part of the truth-in-sentencing plan, a mechanism for the comprehensive restructuring of criminal sentences to achieve the objectives of increased incarceration of violent and repeat offenders and alternative punishments for certain non-violent offenders;

5. To evaluate current inmate population and cost projections in the Virginia corrections system and the population and fiscal impact of the truth-in-sentencing plan recommended by the Commission; and

6. To conduct public meetings throughout the Commonwealth of Virginia for the purpose of receiving the views of citizens and informing them about the proposed truth-in-sentencing system and its objectives.

The Commission shall be composed of no more than 35 members appointed by the Governor and serving at his pleasure. The Governor shall designate a Chair and Vice-Chair, or in lieu thereof two or more Co-Chairs, of the Commission.

Such staff support as is necessary for the conduct of the Commission's work during the term of its existence, estimated at 5,000 hours, shall be furnished by the Office of the Governor, the Offices of the Governor's Secretaries, the Department of Planning and Budget, and such other executive agencies, with closely and definitely related purposes, as the Governor may designate. Such funding as is necessary for the term of the Commission's existence shall be provided from such sources, both state funds appropriated for the same purposes as the Commission and private contributions, as are authorized by Section 2.1-51.37(2) of the Code of Virginia. Expenditures for the Commission's work are estimated to be \$125,000.

Members of the Commission shall serve without compensation and shall not receive any expenses incurred in the discharge of their official duties.

The Commission shall complete its work and report to the Governor no later than January 1995, unless directed otherwise by the Governor. It may issue interim reports and make recommendations at any time it deems necessary or upon the request of the Governor.

This Executive Order shall be effective upon its signing

retroactively to February 4, 1994, and shall remain in full force and effect until February 3, 1995, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1148; Filed July 26, 1994, 4:25 p.m.

EXECUTIVE ORDER NUMBER EIGHTEEN (94)

CONTINUING CERTAIN EMERGENCY  
DECLARATIONS DUE TO NATURAL DISASTERS  
IN THE COMMONWEALTH

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 44-146.17 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the states of emergency declared in the following executive orders:

Executive Order Number 65 (85), Declaration of a State of Emergency for Flash Flooding and Mudslides Occurring Throughout the Commonwealth of Virginia as continued by Executive Orders Number 15 (86), 46 (87), 60 (88), 69 (89), 10 (90), 34 (91), 51 (92), and 70 (93);

Executive Order Number 76 (89), Declaration of State of Emergency Arising From Flooding in Buchanan County, Virginia, as continued by Executive Orders Number 10 (90), 34 (91), 51 (92), and 70 (93);

Executive Order Number 45 (92), Declaration of State of Emergency Arising from Flash Flooding in the Western Region of Virginia as continued by Executive Order Number 51 (92), and 70 (93);

Executive Order Number 65 (93), Declaration of a State of Emergency Arising From Heavy Snowfall, High Winds and Extremely Low Temperatures in All Parts of Virginia and the Need to Operate Shelters as continued by Executive Order Number 70 (93);

Executive Order Number 72 (93), Declaration of a State of Emergency Arising From a Storm System Which Covered Most of the Commonwealth;

Executive Order Number 76 (93), Declaration of a State of Emergency Arising From Tornadoes in the Southcentral, Southeastern and Eastern Parts of Virginia;

Executive Order Number 6 (94), Declaration of a

# Governor

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State of Emergency Arising From a Severe Winter Storm Which Impacted the Commonwealth; and

Executive Order Number 7 (94), Declaration of a State of Emergency Arising From Heavy Snowfall, Torrential Rains, and Icy Conditions Throughout the Commonwealth.

This Executive Order shall be effective July 1, 1994, and will remain in full force and effect until June 30, 1995, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1149; Filed July 26, 1994, 4:25 p.m.

## EXECUTIVE ORDER NUMBER NINETEEN (94)

### EXEMPTING CERTAIN STAFF POSITIONS FROM THE PERSONNEL ACT

By the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 and Section 2.1-113 of the Code of Virginia, all positions in the Governor's Office and the offices of the several Secretaries (including the Secretary of the Commonwealth and the Virginia Liaison Office) are hereby exempted from the provisions of the Virginia Personnel Act, Va. Code Section 2.1-110 et seq.

This Executive Order rescinds Executive Order Number Three (82), Exempting Certain Staff Positions From the Personnel Act, issued by Governor Charles S. Robb on January 16, 1982.

This Executive Order shall be effective retroactively to January 15, 1994, upon its signing, and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1150; Filed July 26, 1994, 4:25 p.m.

## EXECUTIVE ORDER NUMBER TWENTY (94)

### DESIGNATION OF EXECUTIVE BRANCH OFFICERS AND EMPLOYEES REQUIRED TO FILE FINANCIAL DISCLOSURE STATEMENTS

The State and Local Government Conflict of Interests

Act reflects the Commonwealth's continuing commitment that the judgment of public officers and employees will not be compromised or affected by inappropriate conflicts between the personal economic interests and the official duties of Virginia's public servants.

In furtherance of the purposes of the State and Local Government Conflict of Interests Act, Section 2.1-639.1 et seq. of the Code of Virginia (hereinafter, "the Act"), and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.1-41.1, 2.1-42, and 2.1-639.13 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the following policies and procedures to implement the Act in executive branch agencies, institutions, boards, and commissions:

1. In order that all appropriate executive branch officers and employees may be designated to file the annual statement of economic interests set out in the Act, each of the Governor's Secretaries shall submit to me by October 1, 1994, a report identifying:

(a) Each position within the Secretary's jurisdiction, whether classified or non-classified, which involves substantive responsibility for inspection, investigation, licensure, or other regulation of the activities of private firms, organizations, or professions; and

(b) Each position within the Secretary's jurisdiction, whether classified or non-classified, which involves substantive responsibility for procurement, audit, investment, or other activities that could be subject to abuse or improper influence as a result of the personal economic interests of the officeholder or employee.

2. In order that members of appropriate boards and commissions within the executive branch may be designated to file the annual statement of personal interests required by the Act, the Secretary of the Commonwealth shall submit to me by October 1, 1994, a report identifying those boards and commissions bearing substantial responsibility for inspection, investigation, licensure, or other regulation of the activities of private firms, organizations, and professions. The report also shall identify those boards and commissions bearing substantial responsibility for procurement, audit, investigation, or other activities that could be subject to abuse or improper influence as a result of the personal economic interests of members.

3. Subject to my approval, the Secretary of the Commonwealth shall prepare from the reports submitted pursuant to paragraphs 1 and 2 above, a comprehensive list of officers, employees and members of boards and commissions within the executive branch who shall be required to file the

statement of economic interests set out in the Act. The Secretary of the Commonwealth, with the assistance and cooperation of the Governor's Secretaries, shall maintain this list, shall review and revise it annually to reflect the creation and abolition of offices and positions, and shall annually inform each officer, employee, or board or commission member listed of his or her obligation to file the statement of economic interests in accordance with Section 2.1-639.13 of the Code of Virginia.

4. The head of each agency, institution, board and commission within the executive branch shall assist the Governor's Secretaries and the Secretary of the Commonwealth in compiling the information required by this Executive Order, in ensuring that appropriate additions to and deletions from the list of those designated to file the statement of economic interests are recommended in a timely fashion, and in ensuring that designated officers and employees file their statements of economic interests in accordance with Section 2.1-639.13 of the Code of Virginia.

5. The head of each agency, institution, board and commission within the executive branch shall communicate to the officers, employees, and members within his or her jurisdiction the importance and necessity of maintaining the highest standards of conduct, and of avoiding even the appearance of impropriety arising out of personal economic interests and the conduct of the business of the Commonwealth.

This Executive Order shall become effective July 1, 1994, and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

V.A.R. Doc. No. R94-1151; Filed July 26, 1994, 4:23 p.m.

EXECUTIVE ORDER NUMBER TWENTY-ONE (94)

STATE EMPLOYEE FRAUD, WASTE, AND ABUSE  
HOTLINE

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Department of the State Internal Auditor to continue the statewide toll-free telephone "hotline" to encourage state employees to report situations where fraud, waste, and abuse may occur in Virginia state agencies and institutions.

There continues to exist within Virginia's government, as in every other state in the nation, an ongoing and continuing possibility of fraud, waste, and abuse in the conduct of government business. Despite the Commonwealth's historic reputation for honesty and integrity in the management of its affairs, we cannot be complacent. We must be diligent in ensuring that Virginia's state government is ethical and fiscally responsible.

State employees should continue to have the opportunity to report possible instances of fraud, waste or abuse anonymously by using the toll-free telephone hotline. The Department of the State Internal Auditor (DSIA) shall remain responsible for administering the hotline. This arrangement coincides with the responsibilities that executive branch agency heads have for maintaining appropriate internal controls to protect against fraud, waste, and abuse.

DSIA, through its network of internal auditing programs, shall ensure that investigation and resolution activities are undertaken in response to reports received on the hotline. DSIA shall determine the authenticity of allegations and ensure that appropriate corrective actions are taken to rectify any fraud, waste, and abuse.

DSIA shall undertake its investigation and resolution activities in the most cost-effective manner available. Accordingly, DSIA should assign responsibility for investigation and resolution to other investigative staffs where such responsibility is prescribed by law and where appropriate to avoid duplicating or replacing existing investigation and resolution functions.

State employees shall continue to be reminded of the hotline through such measures as the Personnel Communique, payroll stubs, and Virginia's statewide government telephone directory.

All executive branch agencies of the Commonwealth shall cooperate with, and provide assistance to, DSIA to the fullest extent allowed by law.

This Executive Order rescinds Executive Order Number Fifty-Seven (92), Hotline for State Employees to Report Fraud, Waste or Abuse, issued by Governor Lawrence Douglas Wilder on September 28, 1992.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

V.A.R. Doc. No. R94-1152; Filed July 26, 1994, 4:23 p.m.

# Governor

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## EXECUTIVE ORDER NUMBER TWENTY-TWO (94)

### GOVERNOR'S ADVISORY BOARD OF ECONOMISTS

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 and Section 2.1-393 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Advisory Board of Economists.

The general responsibility of the Board shall be to review and evaluate revenue estimates to be used in the formulation of the Governor's Budget and amendments thereto. The Board shall review and make recommendations regarding:

1. Economic assumptions and technical econometric methodology used to prepare the Governor's annual six-year estimates of anticipated general and nongeneral fund revenues;
2. Assumptions and methodologies used to project general fund and nongeneral fund revenues for the current and future biennia;
3. Current and projected economic outlook for the Commonwealth and the nation; and
4. Other related issues, at the request of the Governor.

The Board shall be comprised of members appointed by the Governor and shall serve at his pleasure. The Governor or his designee shall serve as chairman. Members of the Board shall be economists selected from both the public and private sectors, and shall include those who teach and conduct research and practice economics.

This Executive Order rescinds Executive Order Number Twenty-Five (90), Governor's Advisory Board of Economists, issued by Governor Lawrence Douglas Wilder on October 10, 1990.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1153; Filed July 26, 1994, 4:25 p.m.

## EXECUTIVE ORDER NUMBER TWENTY-THREE (94)

### AUTHORITY AND RESPONSIBILITY UNDER THE FEDERAL INTERMODAL SURFACE TRANSPORTATION AND EFFICIENCY ACT OF 1991

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.1-39.1 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby affirm and delegate to the Secretary of Transportation the powers and duties set out below as necessary for the Commonwealth to fulfill the requirements of the federal Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA).

1. Make appropriate quarterly certifications and notify the federal Secretary of Transportation of the amounts of obligations expected to be incurred for surface transportation program projects in Virginia;
2. Certify the consistency of early acquisition of rights-of-way with the State transportation planning process and under the mandatory, comprehensive and coordinated land use, environment, and transportation planning process;
3. Establish agreements with local governments as needed for the designation and redesignation of metropolitan planning organizations and the determination of metropolitan area boundaries;
4. Receive long-range plans submitted by metropolitan planning organizations;
5. Approve metropolitan transportation improvement programs;
6. Develop requests to the federal Secretary of Transportation to designate additional areas as transportation management areas;
7. Provide reasonable opportunities for comments on the State Transportation Improvement Program to citizens, affected public agencies, representatives of transportation agency employees, other affected employee representatives, private providers of transportation, and other interested parties;
8. Represent the Governor on an interstate study commission for the National Capitol Region; and
9. Notify the Federal Highway Administration of the certifying official(s) for each ISTEA Management System by September 30, 1994.

This Executive Order rescinds Executive Order Number Fifty-Five (92), Authority and Responsibility Under the

Federal Intermodal Surface Transportation and Efficiency Act of 1991, issued by Governor Lawrence Douglas Wilder on August 27, 1992.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1154; Filed July 26, 1994, 4:25 p.m.

EXECUTIVE ORDER NUMBER TWENTY-FOUR (94)

CONTINUATION OF VIRGINIA COASTAL RESOURCES  
MANAGEMENT PROGRAM

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Sections 2.1-39.1 and 2.1-41.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Virginia Coastal Resources Management Program and direct all state agencies to carry out their legally established duties consistent with this Program and in a manner that promotes coordination among agencies in achieving the Program's goals and objectives.

I. POLICY GOALS AND OBJECTIVES

State agencies having responsibility for the Commonwealth's coastal resources shall promote the Coastal Resources Management Program (the Program) consistent with the following goals and objectives:

Prevention of Environmental Pollution and Protection of Public Health

1. To maintain, protect, and improve the quality of coastal waters suitable for the propagation of aquatic life and recreation involving body contact;
2. To reduce non-point pollution, caused by inappropriate land uses and inadequate land management practices, in tidal streams, estuaries, embayments, and coastal waters;
3. To reduce the potential for damage to coastal resources from toxic and other hazardous materials through effective site selection and planning, as well as improved containment and cleanup programs;
4. To prevent significant deterioration of air quality; and

5. To protect the public health from contaminated seafood.

Prevention of Damage to Natural Resource Base

6. To protect ecologically significant tidal marshes from despoliation or destruction;
7. To minimize damage to the productivity and diversity of the marine environment resulting from alteration of subaqueous lands and aquatic vegetation;
8. To minimize damage to the productivity and diversity of the marine environment resulting from the disruption of finfish and shellfish population balances;
9. To reduce the adverse effects of sedimentation on productive marine systems; and
10. To maintain wildlife habitat areas and to preserve endangered fish and wildlife species.

Protection of Public and Private Investment

11. To conserve coastal sand dune systems;
12. To reduce or prevent losses of property, tax base, and public facilities caused by shorefront erosion; and
13. To minimize dangers to life and property caused by coastal flooding and storms.

Promotion of Resources Development

14. To promote the wise use of coastal resources for the economic benefit and employment of the citizens of the Commonwealth;
15. To protect and maintain existing uses of estuarine waters for shellfish propagation and marketing;
16. To encourage provision of commercial and industrial access to coastal waters where essential to desired economic activities;
17. To coordinate the Commonwealth's planning processes for major projects to facilitate consideration of alternative locations for such facilities within the context of long-term development patterns and their implications;
18. To maintain or improve productive fisheries;
19. To encourage exploration and production of outer continental shelf energy reserves; and
20. To provide for the extraction of mineral resources in a manner consistent with proper environmental practices.

Promotion of Public Recreation Opportunities

# Governor

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21. To provide and increase public recreational access to coastal waters and shorefront lands.

## Promotion of Efficient Government Operation

22. To provide a shoreline permitting procedure, administered at the local level wherever possible, which assures adequate review and mitigation of probable impacts as well as timely response to applicants.

## Provision of Technical Assistance and Information

23. To provide state and local governing officials and private citizens with technical advice necessary to make wise decisions regarding uses of and impacts on coastal resources;

24. To conduct continuing educational programs in Coastal Resources Management for local and state officials; and

25. To maintain and improve data bases, maps and photoimagery to support decision-makers' needs.

## II. ENFORCEMENT

The following agencies shall have primary responsibility for implementing the enforceable policies of the Program:

Department of Environmental Quality

Department of Conservation and Recreation

Department of Game and Inland Fisheries

Department of Health

Marine Resources Commission

Department of Agriculture and Consumer Services

Chesapeake Bay Local Assistance Department

In addition, other agencies that conduct activities which may affect coastal resources shall conduct such activities in a manner consistent with and supportive of Virginia's Coastal Resources Management Program. For purposes of this Program, the Coastal Area shall mean Tidewater Virginia as defined in Section 28.2-100 of the Code of Virginia.

The Director of the Department of Environmental Quality (DEQ) shall monitor all state actions that affect coastal resources. When, in the judgment of the DEQ Director, a state agency, regulatory board, or commission is ready to act in a manner that appears to be inconsistent with the Program or has established a pattern of actions that appears to be inconsistent with the Program, the Director shall discuss the situation with the head of such agency, board or commission to determine if

a consistency problem in fact exists.

If, after discussion, the head of such agency, board or commission and the Director of DEQ are in disagreement about the existence of a consistency problem, the Director will inform the Secretary of Natural Resources of the disagreement. The Secretary shall then determine if a state consistency problem exists.

If the head of such agency, board or commission and the Director of DEQ agree that a consistency problem exists, they shall attempt to resolve the problem. If they cannot resolve the problem, the Director shall advise the Secretary that an unresolved state consistency problem exists.

Upon notification of the existence of an unresolved consistency problem, the Secretary shall review the problem, determine how it should best be resolved, and effect such resolution within the Secretariat of Natural Resources or consult with other Cabinet Secretaries to resolve a consistency problem with agencies, boards or commissions not within the Secretariat of Natural Resources. If unable to resolve the problem, the Secretary shall report the problem to the Governor and recommend appropriate action. The Governor shall have the ultimate responsibility for resolving any consistency problem that cannot be resolved by the Secretary of Natural Resources.

Any person having authority to resolve consistency problems under the terms of this Executive Order shall resolve those problems in a manner that furthers the goals and objectives of the Program as set forth above and in accordance with existing state law, regulations, and administrative procedures.

This Executive Order rescinds Executive Order Number Fifteen (90), Continuation of Virginia Coastal Resources Management Program, issued by Governor Lawrence Douglas Wilder on June 29, 1990.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia on this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1155; Filed July 26, 1994, 4:23 p.m.

## EXECUTIVE ORDER NUMBER TWENTY-FIVE (94)

### ASSIGNING RESPONSIBILITY FOR PARTICIPATION IN THE FEDERAL "SUPERFUND" PROGRAM

By virtue of the authority vested in me as Governor

under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.1-39.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby assign responsibilities for the administration and coordination of state response actions under the Federal Comprehensive Environmental Response and Liability Act of 1980 ("Superfund" Program), as amended, to the following executive branch agencies and officials:

1. The Secretary of Public Safety or the Secretary's designee shall be responsible for entering into cooperative agreements with the United States Environmental Protection Agency (EPA) regarding the immediate response to the release of, or substantial threat of a release of, hazardous substances that threaten the public health, welfare, and environment.

2. The State Coordinator of the Department of Emergency Services, under the direction of the Secretary of Public Safety, shall be responsible for developing the Virginia Oil and Hazardous Materials Emergency Response Plan and other requisite documents.

3. The Secretary of Natural Resources or the Secretary's designee shall be responsible for entering into cooperative agreements and other agreements and contracts with the EPA, the United States Department of Defense (DoD), and other federal agencies for the Superfund Site Assessment, Removal and Remedial Programs. Such agreements and contracts shall provide for the investigation and assessment of releases of hazardous substances into the environment, for the expeditious removal of hazardous substances from the environment, and for remedial actions providing permanent resolution of the release of hazardous substances into the environment. Before signing any cooperative agreement, the Secretary of Natural Resources shall assure the adherence to any applicable requirements of the General Provisions of the current Appropriation Act.

4. The Director of the Department of Environmental Quality, under the direction of the Secretary of Natural Resources, shall be responsible for developing and negotiating the State/EPA cooperative agreements and other agreements and contracts with EPA, DoD and other federal agencies for Superfund Site Assessment, Removal, and Remedial Programs, except removals that involve immediate response to the release of hazardous substances that threaten the public health, welfare, and environment. This authority shall continue until December 31, 1994, when authority over Superfund activities in Virginia reverts back to EPA as specified in the Appropriation Act.

5. The Director of the Department of Environmental Quality is authorized to sign, on behalf of the Commonwealth, the hazardous waste capacity

assurance plan mandated by the Superfund Amendments and Reauthorization Act and any amendments thereto.

6. The Secretary of Natural Resources shall act on behalf of the public as trustee for natural resources. The Secretary of Natural Resources shall assess damage to natural resources in the case of injury to, destruction of, or loss of natural resources. Funds recovered by the Secretary of Natural Resources as trustee shall be available only to restore, rehabilitate, or acquire the equivalent of such natural resources.

7. The Secretary of Natural Resources and the Secretary of Public Safety are authorized to develop memoranda of understanding which set forth the working relationships between and among state agencies with responsibilities under this Executive Order and applicable statutes.

This Executive Order rescinds Executive Order Number Eighteen (90), Assigning Responsibility to State Officials and State Agencies for Participation in the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 ("Superfund" Program), issued by Governor Lawrence Douglas Wilder on June 29, 1990.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1156; Filed July 26, 1994, 4:25 p.m.

#### EXECUTIVE ORDER NUMBER TWENTY-SIX (94)

##### DESIGNATION OF HOUSING CREDIT AGENCY UNDER FEDERAL TAX REFORM ACT OF 1986

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 of the Code of Virginia, and under the federal Tax Reform Act of 1986, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct that all of the State Housing Credit Ceiling for the Commonwealth, as determined in accordance with the Tax Reform Act of 1986, shall be allocated for the period of July 1, 1994, through June 30, 1998 to the Virginia Department of Housing and Community Development (DHCD), as the Housing Credit Agency for the Commonwealth.

# Governor

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The Tax Reform Act of 1986 ("the Act"), adopted by the U.S. Congress and signed by the President, authorizes tax credits that may be claimed by owners of residential rental projects that provide housing for low-income residents. The Act imposes a ceiling, called the "State Housing Credit Ceiling," on the aggregate amount of tax credits that may be allocated during each calendar year to qualified housing projects within each state. The Act also provides for an allocation of the State Housing Credit Ceiling to the "Housing Credit Agency" of each state, but permits each state's governor to establish a different formula for allocating the State Housing Credit Ceiling.

As the Commonwealth's Housing Credit Agency for the low-income housing tax credits program authorized by the Act, DHCD is hereby directed to consult with state housing agencies and authorities, local housing authorities, and with other interested parties, and to hold at least one public hearing to obtain public comments on the proposed rules for the program.

This Executive Order rescinds Executive Order Number Forty (91), Federal Limits on Tax Credits for Low Income Housing, issued by Governor Lawrence Douglas Wilder on October 14, 1991.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect until June 30, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of June, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1157; Filed July 26, 1994, 4:25 p.m.

## EXECUTIVE ORDER NUMBER TWENTY-SEVEN (94)

### CONTINUING AND EVALUATING THE VIRGINIA ENERGY PLAN

The Virginia Energy Plan was initiated in September 1991 to provide for a sustainable energy future for Virginia by improving energy efficiency, increasing energy conservation, and advancing renewable and alternative energy technologies.

The Plan was implemented by Executive Order Number Thirty-Seven (91), which expires June 30, 1994. This Executive Order continues the Virginia Energy Plan in effect during the pendency of an ongoing evaluation of the Plan to identify changes to improve its effectiveness and efficiency.

A comprehensive statewide approach is critical to Virginia's energy conservation. Such an approach has the potential to: reduce consumption of energy resources;

extend the use of coal, oil and gas reserves; improve energy efficiency; reduce environmental impacts; preserve natural resources; and secure independence from foreign oil. The Virginia Energy Plan encompasses a statewide program that focuses on energy efficiency and conservation through production, management planning, awareness, transportation, and fuel alternatives.

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Chapter 5 of Title 2.1 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby direct the Governor's Secretaries and all executive branch agencies to continue implementation of the Virginia Energy Plan consistent with their statutory authority in order to secure an energy-efficient future for Virginia.

The Virginia Energy Plan is applicable to all state agencies to the extent it is consistent with the statutory authority of those agencies. I hereby assign specific responsibilities for the implementation of the Virginia Energy Plan as follows:

#### I. Responsibilities of the Secretary of Commerce and Trade

The Secretary of Commerce and Trade shall be responsible for providing guidance and direction for energy policy and conservation planning, shall lead the evaluation of the Virginia Energy Plan, and shall recommend improvements thereto to the Governor. Specifically, the Secretary of Commerce and Trade shall:

- A. Comprehensively integrate energy conservation and efficiency policies into the operations and programs of state government through the Virginia Energy Plan;
- B. Coordinate with other Secretaries where activities and programs are shared among secretarial areas;
- C. Provide general guidance to the Department of Mines, Minerals and Energy and report on accomplishments under the Virginia Energy Plan to the Governor;
- D. Approve annual updates and any modifications to the Virginia Energy Plan to maintain consistency with the policy directives of the Governor and to enhance the accomplishment of the goals and objectives;
- E. Resolve differences between participating agencies when agreement cannot be reached among them;
- F. Serve as liaison with Virginia businesses to obtain their expertise, assistance and cooperation in advancing energy efficiency and alternative fuels in Virginia; and
- G. Conduct a thorough evaluation of the Virginia

Energy Plan to determine changes to improve its effectiveness and efficiency.

II. Responsibilities of the Department of Mines, Minerals and Energy

The Department of Mines, Minerals and Energy (DMME) shall be responsible for coordinating and implementing the Virginia Energy Plan.

Specifically, DMME shall:

- A. Review, revise and maintain the Virginia Energy Plan through a collaborative process among state agencies;
B. Execute the strategies designated to it;
C. Draw on expertise of other agencies, where appropriate, to ensure the successful execution of the Virginia Energy Plan strategies;
D. Develop an energy planning process and coordinate the development of an energy management plan for each agency, based on the Virginia Energy Plan; and
E. Provide guidance and training to other agencies, when needed, to execute the Virginia Energy Plan successfully.

III. Responsibilities of All Executive Branch Agencies

To accomplish the goals, objectives, and strategies of the Virginia Energy Plan, each executive branch agency and institution shall:

- A. Execute the strategies designated to the agency or institution in the Virginia Energy Plan;
B. Designate an energy manager(s) and authorize staff involvement in the accomplishment of the Virginia Energy Plan, including participation in task forces, training, plan development, and plan execution;
C. Develop an energy management plan consistent with the process coordinated by DMME;
D. Implement the energy management plan in an orderly and timely manner and undertake modification of internal agency operations and programs consistent with the goals and objectives of the Plan and state law; and
E. Monitor and report progress on accomplishing the energy management plan to DMME as requested.

This Executive Order rescinds Executive Order Number Thirty-Seven (91), Virginia Energy Plan, issued by Governor Lawrence Douglas Wilder on September 18, 1991.

This Executive Order is effective upon its signing and

shall remain in full force and effect until June 30, 1995, unless amended or rescinded by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 30th day of June, 1994.

/s/ George Allen
Governor

VA.R. Doc. No. R94-1158; Filed July 26, 1994, 4:23 p.m.

EXECUTIVE ORDER NUMBER TWENTY-EIGHT (94)

EMERGENCY TRAVEL AUTHORIZATION FOR TRUCKS HAULING GOODS TO DISASTER AREAS WITHIN THE STATE OF GEORGIA

By virtue of the authority vested in me as Governor under Article V of the Constitution for Virginia and Section 44-146.17 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby authorize the Departments of State Police, Transportation, Motor Vehicles and the State Corporation Commission to grant temporary overweight/registration/license exemptions to carriers transporting essential emergency relief supplies to the State of Georgia.

The gross weights shown below are the maximum allowed:

Table with 2 columns: Vehicle Type and Weight. Includes rows for Any one Axle (24,000), Tandem Axles (44,000), Single Unit (2 Axle) (44,000), Single Unit (3 Axle) (54,000), Tractor-Semitrailer (4 Axle) (75,000), Tractor-Semitrailer (5 Axle) (90,000), Tractor-Semitrailer (6 Axle) (90,000), Tractor-Twin Trailers (5 or more Axles) (90,000), Other Combinations (5 or more Axles) (90,000), and Per inch or tire width in contact with road surface (850).

In addition to described overweight transportation privileges, carriers are also exempt from registration with SCC/DMV. This includes the vehicle enroute and returning to their home base.

The information contained in this Executive Order shall be communicated to all staff responsible for Permit

# Governor

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issuance and Truck legalization enforcement.

This Executive Order is effective upon its signing and shall remain in full force and effect until rescinded or amended by further Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of July, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1159; Filed July 26, 1994, 4:25 p.m.

## EXECUTIVE ORDER NUMBER TWENTY-NINE (94)

### DELEGATION OF GOVERNOR'S AUTHORITY TO CALL THE MILITIA TO ACTIVE SERVICE FOR LARGE DISASTERS WHEN THE GOVERNOR IS OUT OF THE COMMONWEALTH OF VIRGINIA AND CANNOT BE REACHED

By virtue of the authority vested in me by Section 2.1-39.1 of the Code of Virginia, and subject to the provisions stated herein, I hereby affirm and delegate to the Chief of Staff, followed in protocol order by the Secretary of Public Safety, my authority under Section 44-75.1 of the Code of Virginia, to call forth the militia or any part thereof to state active duty in any of the circumstances outlined in subsections 4 and 5 thereof, in accordance with the following conditions:

1. Such delegation is subject always to my continuing, ultimate authority and responsibility to act in such matters.
2. Use of this delegation is contingent upon my being outside the borders of the Commonwealth of Virginia and unable to be reached so as to give my approval for use of the Virginia National Guard.
3. This delegation is strictly standby in nature, to be held in abeyance until such time as there may be explicit circumstances involving an emergency whereby human lives and public and private property are threatened in event of flood, hurricane, fire, or other forms of natural or man-made disasters.
4. If the authority granted under this order is used, I am to be informed of such use as soon as practicable.

The following conditions apply to the employment of the Virginia National Guard:

1. In all instances, members of the Virginia National Guard shall remain subject to military command as prescribed by Section 44-78.1 of the Code of Virginia and not subject to the civilian authorities of the state or local governments.

2. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers' Compensation benefits provided to members of the Virginia National Guard by the Virginia Workers' Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers' Compensation Act during the same month. If and when the time period for payment of Workers' Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to Section 44-14 of the Code of Virginia, and subject to the concurrence of the Board of Military Affairs, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

3. The costs incurred by the Department of Military Affairs in performing these missions shall be paid out of the Sum Sufficient appropriation in accordance with Section 44-146.28 of the Code of Virginia.

This Executive Order shall be effective upon its signing, and shall remain in full force and effect until June 30, 1995, unless sooner amended or rescinded by further executive order. That portion providing for benefits for members of the Virginia National Guard in the event of injury or death shall continue to remain in effect after termination of this Executive Order as a whole.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 15th day of July, 1994.

/s/ George Allen  
Governor

VA.R. Doc. No. R94-1160; Filed July 26, 1994, 4:25 p.m.

# GENERAL NOTICES/ERRATA

## Symbol Key †

† Indicates entries since last publication of the Virginia Register

changes to the regulation shall be subject to judicial review.

## GENERAL NOTICES

### STATE AIR POLLUTION CONTROL BOARD

#### Notice of Right to Petition for Regulation Revision HH Concerning Regulated Medical Waste Incinerators

##### Introduction

The 1992 General Assembly of Virginia passed legislation to require the promulgation of regulations concerning regulated medical waste by September 1, 1993. This legislation was resubmitted to the General Assembly in the 1993 session; however, the deadline for promulgation of regulations remained September 1, 1993. Due to changes in the Administrative Process Act, and in order to meet the September 1 deadline, the board adopted an emergency regulation covering regulated medical waste incinerators which was effective June 28, 1993, and remained in effect for one year. In order to comply with the legislation, the board was required to adopt a permanent regulation.

The law states, "The State Air Pollution Control Board and the Virginia Waste Management Board shall each promulgate regulations with respect to the permitting of infectious waste incinerators...by September 1, 1993, or as soon as practicable thereafter within the constraints of the Administrative Process Act (§ 9-6.14:1 et seq.)."

On July 14, 1994, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution" (VR 120-01), specifically, Standards of Performance for Regulated Medical Waste Incinerators (Rule 5-6). The regulation is to be effective on September 15, 1994.

##### Right to Petition

In accordance with the Administrative Process Act, subsection J of § 9-6.14:7.1 of the Code of Virginia:

If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a final regulation, any person may petition the agency within thirty days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall suspend the regulatory process for thirty days to solicit additional public comment, unless the agency determines that the changes made are minor or inconsequential in their impact. Agency denial of petitions for a comment period on

In adopting the regulated medical waste regulation, the board requested that notice of the right to petition be announced. Persons wishing to exercise their right to petition should follow the procedures described below. A copy of the final regulation has been published in the August 8, 1994, edition of the Virginia Register. It may also be obtained from the contact listed below.

##### Procedures

All requests must be received by the department by close of business September 7, 1994, to be considered. Requests may be submitted by mail, facsimile transmission (FAX number: 804-762-4510) or by personal delivery. All requests must be submitted to the Manager, Air Programs Section, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240. Facsimile copies will be considered only if followed by receipt of the original within one week.

##### Agency Contact

The department contact for any questions about this notice is:

Karen G. Sabasteanski  
Policy Analyst  
Air Programs Section  
Department of Environmental Quality  
P.O. Box 10009  
Richmond, Virginia 23240  
Phone: (804) 762-4426

### DEPARTMENT OF EDUCATION

#### † Notice of Pending Action

The Department of Education, pursuant to 20 U.S.C. § 1416, publishes this public notice to bring the pendency of the following action to the attention of the public within Virginia.

The Virginia Department of Education received notice from Judith E. Heumann, Assistant Secretary for the Office of Special Education and Rehabilitative Services, of her intention to take action under § 1416(a) of the Individuals with Disabilities Education Act (IDEA) to withhold fiscal year 1995 funds and all subsequent payment under Part B of the IDEA. The notice, dated May 3, 1994, further stated that the United States Secretary of Education intends to find that there has been

# General Notices/Errata

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a failure to comply substantially with the provisions of § 1412(1) and/or (2)(B) of the IDEA. A hearing on the intended withholding has been requested by Virginia in accordance with 20 U.S.C. § 1416(a). The administrative action is pending in the United States Department of Education, Office of Hearings and Appeals, as Dkt. No. 94-76-0.

Pursuant to the court order in Virginia Department of Education v. Richard W. Riley, United States Secretary of Education, United States Department of Education, 23 F.3d 80 (4th Cir. 1994), the federal funds referred to in the May 3 notice of the Assistant Secretary may not be withheld until the procedures of 20 U.S.C. § 1416(a) are met.

## 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 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

## ERRATA

### VIRGINIA ASBESTOS LICENSING BOARD

Title of Regulation: VR 137-01-02. Virginia Asbestos Licensing Regulations.

Publication: 10:21 VA.R. 5341-5384 July 11, 1994.

#### Correction to Final Regulation:

Page 5343, column 1, change "Director supervision" to "Direct supervision"

Page 5344, column 1, definition of "RFS Inspector's License," line 3, change "flooring and siding" to "flooring or siding"

Page 5345, column 1, § 3.1 B, line 2, change "past 24 months" to "past 12 months"

Page 5349, column 2, § 9.2 B 1, line 8, change "AHERA and the" to "AHERA or the"

Page 5351, column 1, § 11.4 F, line 1, after "on-site must be employed by a" insert "Virginia"

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# CALENDAR OF EVENTS

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## 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

† **September 13, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ♿

An informal fact-finding conference in regard to the Board for Accountancy v. Stanford H. Bradshaw. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration.

**Contact:** Carol A. Mitchell, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

† **September 22, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ♿

An informal fact-finding conference in regard to the Board for Accountancy v. Mary K. Musgrove. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your

request for accommodation at least two weeks in advance for consideration.

**Contact:** Carol A. Mitchell, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

### VIRGINIA AGRICULTURAL COUNCIL

**August 22, 1994 - 9 a.m.** – Open Meeting  
Embassy Suites Hotel, 2925 Emerywood Parkway,  
Richmond, Virginia ♿ (Interpreter for the deaf provided upon request)

An annual business meeting. The agenda will consist of an annual review of finances, progress reports on approved projects, and general business matters. The council will allot 30 minutes at the conclusion of the business meeting for the public to appear before the council. Any person who needs any accommodation in order to participate at the meeting should contact Thomas R. Yates at least 10 days before the meeting date so that suitable arrangements can be made for any appropriate accommodations.

**Contact:** Thomas R. Yates, Assistant Secretary, Virginia Agricultural Council, 1100 Bank St., Suite 203, Richmond, VA 23219, telephone (804) 786-6060.

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES (BOARD OF)

† **September 28, 1994 - 9 a.m.** – Open Meeting  
Washington Building, 1100 Bank Street, Room 204,  
Richmond, Virginia. ♿

At this regular meeting, the board plans to discuss regulations and fiscal matters and will receive reports from the staff of the Department of Agriculture and Consumer Services. The board may consider other matters relating to its responsibilities. At the conclusion of other business, the board will review public comments for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting so that suitable arrangements can be made.

**Contact:** Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, Washington Bldg., 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD ☎

# Calendar of Events

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## Virginia's Farmers' Market Board

† August 24, 1994 - 9 a.m. - Open Meeting  
Carroll County Public Library, North Main Street,  
Hillsville, Virginia. ☒

The board will discuss the status of each market and review all fee and funding requests. The board will entertain public comment at the conclusion of all other business for a period not to exceed 30 minutes. Any person who needs any accommodation in order to participate at the meeting should contact Nancy Israel at least five days before the meeting date so that suitable arrangements can be made.

Contact: Nancy Israel, Program Director, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1002, Richmond, VA 23219, telephone (804) 786-3952.

## Virginia Marine Products Board

September 6, 1994 - 5:30 p.m. - Open Meeting  
Kiln Creek and Country Club, 1003 Brick Kiln Boulevard,  
Newport News, Virginia. ☒

The board will meet to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program planning, publicity/public relations, and old/new business.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Blvd., Suite B, Newport News, VA 23602, telephone (804) 874-3474.

## STATE AIR POLLUTION CONTROL BOARD

† August 25, 1994 - 7 p.m. - Public Hearing  
Twin Springs High School, Auditorium, Nickelsville,  
Virginia.

A public hearing is being held in accordance with § 120-08-01 of state regulations to receive comments on a permit application and draft permit for Louisiana-Pacific Corporation in Dungannon, Virginia. The source has proposed a modification to their current permit to allow increased production and installation of a regenerative thermal oxidation air pollution control unit.

Contact: Abingdon Air Office, Department of Environmental Quality, P.O. Box 1190, 121 Russell Road, Abingdon, VA 24212, telephone (703) 676-5582.

## ALCOHOLIC BEVERAGE CONTROL BOARD

August 22, 1994 - 9:30 a.m. - Open Meeting  
September 7, 1994 - 9:30 a.m. - Open Meeting  
September 19, 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, P. O. Box 27491, Richmond, VA 23261, telephone (804) 367-0616.

## BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

August 30, 1994 - 10 a.m. - Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

An informal fact-finding conference in regard to the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects v. Albert E. Neighbors, Jr. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

Contact: Carol A. Mitchell, Assistant Director, Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

† September 29, 1994 - 9 a.m. - Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 4, Richmond,  
Virginia. ☒

A meeting to (i) approve minutes from the May 12, 1994, meeting; (ii) review correspondence; and (iii) review enforcement files.

Contact: Janice S. Beck, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## Board for Architects

† September 1, 1994 - 9 a.m. - Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Conference Room 2, Richmond,  
Virginia. ☒

A meeting to (i) approve minutes from the May 5, 1994, meeting; (ii) review correspondence; (iii) review

enforcement files; and (iv) review applications.

**Contact:** Janice S. Beck, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## Board for Landscape Architects

† **September 15, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

A meeting to (i) approve minutes from the May 6, 1994, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

**Contact:** Janice S. Beck, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## Board for Land Surveyors

† **September 28, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

A meeting to (i) review minutes from the May 11, 1994, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

**Contact:** Janice S. Beck, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## Board for Professional Engineers

† **September 8, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

A meeting to (i) approve minutes from the May 10, 1994, meeting; (ii) review correspondence; (iii) review enforcement files; and (iv) review applications.

**Contact:** Janice S. Beck, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

## VIRGINIA ASBESTOS LICENSING BOARD

**September 21, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 W. Broad Street, Conference Room 3, Richmond,

Virginia ☒

A general 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 ☎

## AUCTIONEERS BOARD

**September 9, 1994** – Written comments may be submitted through this date.

**September 20, 1994 - 9 a.m.** – Public Hearing

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Auctioneers Board intends to **repeal** regulations entitled: **VR 150-01-2. Rules and Regulations for the Virginia Board of Auctioneers** and **adopt** regulations entitled: **VR 150-01-2.1. Rules and Regulations for the Virginia Board of Auctioneers**. The proposed regulations establish entry requirements for licensure of auctioneers and auction firms, examination for licensure, licensure by reciprocity, standards of practice regarding advertising, contract, escrow accounts, records and the standards of conduct for auctioneers. The proposed regulations are a result of legislative amendments enacted to § 54.1-603 of the Code of Virginia, which repealed the registration and certification program for auctioneers and established a single licensure program.

Statutory Authority: §§ 54.1-201 and 54.1-602 of the Code of Virginia.

**Contact:** Willie Fobbs, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514.

† **September 20, 1994 - 9 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 2, Richmond, Virginia. ☒

A meeting to (i) approve minutes from the June 7, 1994, meeting; (ii) review correspondence; and (iii) review enforcement files.

**Contact:** Janice S. Beck, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

# Calendar of Events

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## CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

† **September 15, 1994 - 11 a.m.** – Open Meeting  
McArthur Square, McArthur Memorial Classroom, Norfolk, Virginia. ☒ (Interpreter for the deaf provided upon request)

The board will conduct general business, including review of local Chesapeake Bay Preservation Area programs. Public comment will be taken early in the meeting. A tentative agenda will be available by September 8 from the Chesapeake Bay Local Assistance Department.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll-free 1-800-243-7229/TDD ☎

## Southern Area Review Committee

**August 24, 1994 - 10 a.m.** – Open Meeting  
**September 28, 1994 - 10 a.m.** – Open Meeting  
Chesapeake Bay Local Assistance Department, 8th Street Office Building, 8th and Broad Streets, 7th Floor, Conference Room, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

The committee will review local 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. Public comment will not be received at the committee meeting. Written comments, however, are welcome.

**Contact:** Receptionist, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Richmond, VA 23219, telephone (804) 225-3440 or toll free 1-800-243-7229/TDD ☎

## CHILD DAY-CARE COUNCIL

† **October 11, 1994 - 4 p.m.** – Public Hearing  
Wytheville Community College, 1000 East Main Street, Grayson Hall Commons, Wytheville, Virginia.

† **October 13, 1994 - 3 p.m.** – Public Hearing  
Verona Government Office, 4801 Lee Highway, Verona, Virginia.

† **October 17, 1994 - 4 p.m.** – Public Hearing  
Norfolk City Council Chambers, 810 Union Street, Hall Building, 11th Floor, Norfolk, Virginia.

† **October 19, 1994 - 4 p.m.** – Public Hearing  
Fairfax Government Center, 12011 Government Center Parkway, Human Services Building, 2nd Floor, Room 230, Fairfax, Virginia.

† **October 22, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to amend regulations entitled: **VR 175-08-01. Minimum Standards for Licensed Child Day Centers Serving Children of Preschool Age or Younger.** The purpose of the proposed amendments is to incorporate therapeutic child development and special needs child day standards into the child day center regulations, as well as review the existing standards for clarity and appropriateness.

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

Written comments may be submitted until October 22, 1994, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

**Contact:** Peggy Friedenberg, Policy Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

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† **October 11, 1994 - 4 p.m.** – Public Hearing  
Wytheville Community College, 1000 East Main Street, Grayson Hall Commons, Wytheville, Virginia.

† **October 13, 1994 - 3 p.m.** – Public Hearing  
Verona Government Office, 4801 Lee Highway, Verona, Virginia.

† **October 17, 1994 - 4 p.m.** – Public Hearing  
Norfolk City Council Chambers, 810 Union Street, Hall Building, 11th Floor, Norfolk, Virginia.

† **October 19, 1994 - 4 p.m.** – Public Hearing  
Fairfax Government Center, 12011 Government Center Parkway, Human Services Building, 2nd Floor, Room 230, Fairfax, Virginia.

† **October 22, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Child Day-Care Council intends to amend regulations entitled: **VR 175-09-01. Minimum Standards for Child Day Centers Serving School Age Children.** The purpose of the proposed amendments is to incorporate therapeutic child development and special needs child day standards into the child day center regulations, as well as review the existing standards for clarity and appropriateness.

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

Written comments may be submitted until October 22, 1994, to Peg Spangenthal, Chair, Child Day-Care Council, 730 East Broad Street, Richmond, Virginia 23219.

**Contact:** Peggy Friedenberg, Policy Analyst, Department of

Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1820.

## COMPENSATION BOARD

**August 25, 1994 - 1 p.m.** – Open Meeting  
**September 28, 1994 - 1 p.m.** – Open Meeting  
Ninth Street Office Building, 202 North Ninth Street, 9th Floor, Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine business meeting.

**Contact:** Bruce W. Haynes, Executive Secretary, Compensation Board, P. O. Box 710, Richmond, VA 23206-0686, telephone (804) 786-3886/TDD ☎

## DEPARTMENT OF CONSERVATION AND RECREATION

### Virginia State Parks Foundation

† **September 7, 1994 - Noon** – Open Meeting  
Sky Meadows State Park, Route 1, Box 540, Delaplane, Virginia.

A general business meeting.

**Contact:** Karen Spencer, Executive Secretary, 203 Governor St., Suite 302, Richmond, VA 23219, telephone (804) 786-6124 or (804) 786-2121/TDD ☎

## BOARD FOR CONTRACTORS

† **September 28, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor Conference Room, Richmond, Virginia. ☎

A regular quarterly meeting of the board will address policy and procedure issues, and review and render decisions on matured complaints against licensees. The meeting is open to the public; however, a portion of the board's business may be discussed in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact A.R. Wade. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration.

**Contact:** A.R. Wade, Assistant Director, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8582 or (804) 367-9753.

## Recovery Fund Committee

**September 21, 1994 - 9 a.m.** – Open Meeting

Department of Professional and Occupational Regulation, 3600 West 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. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Christine Martine at (804) 367-8561. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

**Contact:** Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-8561.

## BOARD FOR COSMETOLOGY

† **September 19, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct informal fact-finding conferences in regard to: Board for Cosmetology v. Babette A. Cross (Grady), 10 a.m.; Board for Cosmetology v. Nekicia M. Copling, 11 a.m.; Board for Cosmetology v. Debbie Cargill Terry, noon. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration.

**Contact:** Carol A. Mitchell, Assistant Director, Board for Cosmetology, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

**September 26, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

**Contact:** Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

# Calendar of Events

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## DEPARTMENT OF CRIMINAL JUSTICE SERVICES (CRIMINAL JUSTICE SERVICES BOARD)

**August 26, 1994** – Written comments may be submitted through this date.

**October 5, 1994 - 9 a.m.** – Public Hearing  
General Assembly Building, 910 Capitol Street, House Room D, 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 240-01-15. Rules Relating to Compulsory Minimum Training Standards For Radar Operators.** The proposed regulations include specific training requirements for public law-enforcement officers employed by state and local law-enforcement agencies who operate radar as part of their assigned duties. These training standards include 18 performance based training objectives which each officer required to operate radar must meet prior to being able to operate the unit. Training for radar operators under the proposed regulations may be done at the employing agency by a certified radar operator instructor and records of the training provided are to be maintained by the employing agency. Retraining is required by December 31 of every third calendar year to ensure that the operating officer has retained proficiency in the operation of the speed measurement device. Provisions are available for the exemption or partial exemption of the training requirement based upon previous training and experience.

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

Written comments may be submitted through August 26, 1994, to L.T. Eckenrode, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219.

**Contact:** Paula Scott-Dehetre, Executive Assistant, Department of Criminal Justice Services, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-4000.

## BOARD OF DENTISTRY

† **September 22, 1994 - 8:30 a.m.** – Open Meeting  
Williamsburg Lodge, 310 South England Street, Williamsburg, Virginia. ☒

The board will review public comments on the licensure by endorsement provision of VR 255-01-1 as required by the Administrative Process Act as a result of gubernatorial objection to proposed regulation. This is a public meeting. A 20-minute public comment period will be held at 8:40 a.m.; however, no other public comment will be taken. If the board completes its review of the regulations prior to 6 p.m. on September 22, then regular board business will be conducted at that time.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

† **September 23, 1994 - 8:30 a.m.** – Open Meeting  
Williamsburg Lodge, 310 South England Street, Williamsburg, Virginia. ☒

The board will conduct board business and receive committee reports.

**Contact:** Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906.

## DEPARTMENT OF EDUCATION (STATE BOARD OF)

**September 29, 1994 - 8:30 a.m.** – Public Hearing  
General Assembly Building, 910 Capitol Street, Senate Room B, Richmond, Virginia.

**October 7, 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 amend regulations entitled: **VR 270-01-0009. Regulations Governing Literary Loan Applications in Virginia.** These regulations are being amended to include language required by the 1989 and 1990 sessions of the General Assembly relating to the ceiling on indebtedness to the fund and consolidation incentives; to include changes by the 1991 session to § 22.1-140 of the Code of Virginia; to include changes by the 1994 session to § 22.1-146 of the Code of Virginia; and to increase the maximum loan amount from \$2.5 million to \$5 million per project.

Statutory Authority: §§ 22.1-140 and 22.1-142 et seq. of the Code of Virginia.

**Contact:** Kathryn S. Kitchen, Division Chief, Department of Education, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-2025 or toll-free 1-800-292-3820.

## LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† **September 14, 1994 - 6 p.m.** – Open Meeting  
Public Broadcasting System, 1320 Braddock Place, Alexandria, Virginia. ☒ (Interpreter for the deaf provided upon request)

An open meeting with committee members and facility emergency coordinators to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

# Calendar of Events

**Contact:** Charles McRorie, Emergency Preparedness Coordinator, P.O. Box 178, Alexandria, VA 22313-1500, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

## LOCAL EMERGENCY PLANNING COMMITTEE - COUNTY OF MONTGOMERY/TOWN OF BLACKSBURG

**September 13, 1994 - 3 p.m.** - Open Meeting  
Montgomery County Courthouse, 3rd Floor, Board of Supervisors Room, Christiansburg, Virginia. ☎

A meeting to discuss the development of a Hazardous Materials Emergency Response Plan for Montgomery County and the Town of Blacksburg.

**Contact:** Steve Via, New River Valley Planning District Commission, P. O. Box 3726, Radford, VA 24143, telephone (703) 639-9313 or FAX (703) 831-6093.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Hazardous Waste Technical Advisory Committee

**August 24, 1994 - 10 a.m.** - Open Meeting  
Department of Environmental Quality, 4900 Cox Road, Glen Allen, Virginia. ☎ (Interpreter for the deaf provided upon request)

The committee will meet to assist the department in drafting a proposed Amendment 14 to the Hazardous Waste Management Regulations, VR 672-10-1. The committee will be looking at the changes made in federal regulations since July 1, 1991, as a basis for the amendment. Meetings will be held on successive Wednesdays at the same time and place. Before attending, please check with William Gilley, as the meeting dates and times are subject to change.

**Contact:** William F. Gilley, Regulatory Service Manager, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4214.

### Technical Advisory Committee

**September 1, 1994 - 10 a.m.** - Open Meeting  
Department of Environmental Quality, 629 East Main Street, 4th Floor Conference Room, Richmond, Virginia. ☎

The committee will meet in three sessions to assist the development of amendments to Financial Assurance Regulations for Solid Waste Disposal Facilities (Sanitary Landfills), VR 672-20-1. The draft of amended regulations developed as a result of these meetings will be presented to the Virginia Waste Management Board for consideration. If approved by the board, the proposed amendments will be further considered in public participation proceedings in accord with Public Participation Guidelines, VR 672-01-01.1.

**Contact:** Wladimir Gulevich, Ph.D., P.E., ORPD, Department of Environmental Quality, P. O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218 or (804) 762-4021/TDD ☎

## Waste Tire End User Reimbursement Advisory Committee

**August 30, 1994 - 10 a.m.** - Open Meeting  
Department of Environmental Quality, Innsbrook Office Park, 4900 Cox Road, Board Room, Richmond, Virginia. ☎

A presentation of the Waste Tire End User Reimbursement regulations. The regulations allow end users of Virginia waste tires to receive a partial reimbursement from the Waste Tire Trust Fund. The meeting is to receive comments on the proposed regulations including the costs and benefits of the regulation.

**Contact:** Allan Lassiter, Manager, Waste Tire Program, Department of Environmental Quality, P.O. Box 10009, 629 E. Main St., Richmond, VA 23240-0009, telephone (804) 762-4215.

## Work Group on Detection/Quantitation Levels

**September 14, 1994 - 1:30 p.m.** - Open Meeting  
Department of Environmental Quality, 4949 Cox Road, Lab Training Room, Room 111, Glen Allen, Virginia.

The department has established a work group on detection quantitation levels for pollutants in the regulatory and enforcement programs. The work group will advise the Director of Environmental Quality. Other meetings of the work group have been scheduled at the same time and location for September 28, October 12, October 26, November 9, November 30, and December 14. However, these dates are not firm. Persons interested in the meetings of this work group should confirm the date with the contact person below.

**Contact:** Alan J. Anthony, Chairman, Department of Environmental Quality, 4900 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5070.

## BOARD OF GAME AND INLAND FISHERIES

**August 25, 1994 - 9 a.m.** - Open Meeting

**August 26, 1994 - 9 a.m.** - Open Meeting

NOTE: CHANGE IN LOCATION

Department of Environmental Quality, 4900 Cox Road, Richmond, Virginia. ☎

## AMENDED NOTICE

The Board of Game and Inland Fisheries will meet to set the 1994-95 migratory waterfowl seasons and propose changes governing seasons, bag limits,

## Calendar of Events

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methods of take and possession of fish and nongame wildlife. The board is also expected to consider wildlife management regulations relating to the following topics: (i) the possession of a validation card or permit when such a card or permit is required to hunt and to display such a card or permit upon demand of any officer; (ii) permit requirements for wolf hybrids; (iii) providing for the transport of certain nuisance species by animal control officers and businesses that specialize in nuisance animal damage control; and (iv) rescinding § 14 of VR 325-02-27, which provides for the shooting of wild birds and wild animals from stationary vehicles by disabled persons since the Code of Virginia now provides for this activity.

Administrative and procedural issues may also be discussed by the board. The board will also hold an executive session during this meeting. The appropriate chairmen of board committees may request committee meetings in conjunction with its August meeting or thereafter.

Please note: The board has changed its meeting procedure. Public comment is now accepted on the first meeting day. If the board completes its meeting agenda on August 25, it will not convene a meeting on August 26.

**Contact:** Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

† **August 30, 1994 - 7 p.m. - Open Meeting**  
Rockingham County Office Building, Route 11 North, Board of Supervisors Meeting Room, Harrisonburg, Virginia.

† **August 31, 1994 - 7 p.m. - Open Meeting**  
Roanoke County Administration Center, 5204 Bernard Drive, Board of Supervisors Meeting Room, Roanoke, Virginia.

† **September 1, 1994 - 7 p.m. - Open Meeting**  
Dabney Lancaster Community College, I-64, Exit 24, Gymnasium Meeting Room, Clifton Forge, Virginia.

† **September 1, 1994 - 7 p.m. - Open Meeting**  
Wytheville Community College, I-81, Exit 73, Main Street, Grayson Hall, Wytheville, Virginia.

† **September 6, 1994 - 7 p.m. - Open Meeting**  
Culpeper County High School, Route 229, North of intersection with U.S. Business 15 and 29, Culpeper, Virginia.

† **September 6, 1994 - 7 p.m. - Open Meeting**  
Toano Middle School, 7817 Richmond Road (Route 60), Auditorium, Toano, Virginia.

† **September 7, 1994 - 7 p.m. - Open Meeting**  
Farmville Bus Station, 112 South Street, Second Floor

Meeting Room, Farmville, Virginia.

† **September 8, 1994 - 7 p.m. - Open Meeting**  
Henrico County Government Center, Parham Road, East of Hungary Springs Road intersection, Henrico Administration Building, Board Room, Richmond, Virginia.

† **September 8, 1994 - 7 p.m. - Open Meeting**  
Windsor Elementary School, 23320 North Court Street, Cafeteria, Windsor, Virginia.

† **September 8, 1994 - 7 p.m. - Open Meeting**  
Clinch Valley College, State Route 646, 1/2 mile east of Wise, Chapel, Wise, Virginia.

Public meetings will be held for the purpose of receiving comments regarding changes to game fish and nongame regulations proposals adopted for advertisement by the Board of Game and Inland Fisheries at their August 25 and 26, 1994 meeting. Comments from these meetings will be summarized and reported to the board for their consideration at their October 13 and 14, 1994 meeting (location to be announced). Regulation changes adopted by the board will become effective January 1995. The Board of Game and Inland Fisheries is exempted from the Administrative Process Act and Executive Order Number Thirteen (94) when promulgating wildlife management regulations, including the length seasons, bag limits and methods of take set on wildlife resources within the Commonwealth of Virginia.

**Contact:** Belle Harding, Secretary to the Director, Board of Game and Inland Fisheries, 4010 W. Broad St., P.O. Box 11104, Richmond, VA 23230, telephone (804) 367-1000.

### DEPARTMENT OF HEALTH (STATE BOARD OF)

† **September 2, 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 355-17-200. Biosolids Use Regulations.** These regulations will provide the state standards for regulation of the land application, marketing and distribution of treated sewage sludge of proper quality (biosolids) in accordance with HB 1067 (1994).

Statutory Authority: § 32.1-164.5 of the Code of Virginia.

**Contact:** C. M. Sawyer, Division Director, Department of Health, Division of Wastewater Engineering, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

† **September 8, 1994 - 10 a.m. - Open Meeting**  
Holiday Inn, 10800 Vandor Lane, Manassas, Virginia.

# Calendar of Events

(Interpreter for the deaf provided upon request)

A worksession. An informal dinner will follow at 6:30 p.m.

† **September 9, 1994 - 9 a.m.** – Open Meeting  
Holiday Inn, 10800 Vandor Lane, Manassas, Virginia. ☒  
(Interpreter for the deaf provided upon request)

A business meeting.

**Contact:** Susan R. Rowland, MPA, Assistant to the Commissioner, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

\* \* \* \* \*

**September 9, 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 355-29-100. Board of Health Regulations Governing Vital Records.** Section 32.1-273 of the Code of Virginia authorizes the Board of Health to prescribe a fee, not to exceed \$5.00, for searching and certification of vital records of birth, death, marriage, and divorce. Senate Bill 402, passed by the 1994 General Assembly, raises the maximum limit on vital records fees to \$8.00. Accordingly, the proposed regulations raise the current fee of \$5.00 to the new fee of \$8.00. Comments on the costs and benefits of the proposal are requested.

Statutory Authority: § 32.1-273 of the Code of Virginia.

**Contact:** Deborah M. Little, Director, Office of Vital Records and Health Statistics, P. O. Box 1000, Richmond, VA 23208-1000, telephone (804) 371-6077 or FAX (804) 371-4800.

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**August 27, 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 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.** Pursuant to the Commonwealth's efforts to increase organ, tissue and eye donation, the routine contact protocol regulations are an effort to ensure all families of medically suitable donors are given the opportunity to consider organ, tissue and eye donation. The regulations strengthen the donor program through the application of uniform requirements for hospitals to inform families of organ donor options. Implementation of the proposed regulations will help ensure families of donor candidates are advised of the options available and give them the opportunity to

make their own decisions to donate. Comments on the costs and benefits of the proposal are requested.

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

Written comments may be submitted until August 27, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230 or FAX (804) 367-2149.

**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 or FAX (804) 367-2149.

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**August 27, 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 355-33-500. Rules and Regulations for the Licensure of Hospitals in Virginia.** Discharge planning services link patients departing the hospital with appropriate community resources, a service that is especially important for drug-exposed infants and their mothers. Implementation of the proposed regulations will strengthen hospital discharge planning for substance abusing postpartum women through the application of uniform requirements for informing substance abusing women of treatment services available in the community. Comments on the cost and benefits of the proposal are requested.

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

Written comments may be submitted until August 27, 1994, to Nancy Hofheimer, Director, Office of Health Facilities Regulation, 3600 W. Broad St., Suite 216, Richmond, VA 23230 or FAX (804) 367-2149.

**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 or FAX (804) 367-2149.

## BOARD OF HEALTH PROFESSIONS

† **August 31, 1994 - 10 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☒  
(Interpreter for the deaf provided upon request)

House Joint Resolution No. 223 of the 1994 Session of the Virginia General Assembly requests the Board of Health and the Board of Health Professions to study

# Calendar of Events

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the need for regulation of outpatient cardiovascular and pulmonary rehabilitation programs in the Commonwealth. The public is invited to comment in testimony before the boards at this informational hearing or by submitting written comments, or both. Testimony should be limited to five minutes. Written comments may be of any length. Individuals, agencies or organizations wishing to present testimony may reserve time by contacting the Department of Health Professions. Written comments must be received no later than September 16, 1994.

**Contact:** Richard D. Morrison, Deputy Director for Research, Board of Health Profession, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

† **August 31, 1994 - 2 p.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☎  
(Interpreter for the deaf provided upon request)

House Bill No. 312 to create a Board of Dietetics and Nutrition and to license dietitians and nutritionists in the Commonwealth was passed by the 1994 Session of the Virginia General Assembly. The bill was subsequently vetoed by Governor George Allen following rejection of his proposed amendment to require reenactment of the bill by the 1995 Session. The Governor has requested the Department of Health Professions to review the need for regulating dietitians and nutritionists by virtue of the authority of the Board of Health Professions to advise the Governor and the General Assembly on matters related to the regulation and deregulation of health care occupations and professions (§ 54.1-2510 of the Code of Virginia.) The need to regulate dietitians and nutritionists was last reviewed by the board in 1986 (House Document No. 23 of the 1987 Session of the Virginia General Assembly). At that time, the board recommended that no regulation of dietitians and nutritionists be implemented in the Commonwealth. The board invites public testimony, written comments, or both related to this issue. Testimony will be received at the time and location listed above. Written comments must be received no later than September 16, 1994. Testimony should be limited to five minutes. Written comments may be of any length.

**Contact:** Richard D. Morrison, Deputy Director for Research, Board of Health Profession, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9904 or (804) 662-7197/TDD ☎

## VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

**August 30, 1994 - 9:30 a.m.** – Open Meeting  
† **October 25, 1994 - 9:30 a.m.** – Open Meeting  
Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia. ☎

A monthly meeting.

**Contact:** Kim Bolden Walker, Public Relations Coordinator, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

## BOARD FOR HEARING AID SPECIALISTS

**September 12, 1994 - 9 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting, followed by examination. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

**Contact:** Karen W. O'Neal, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

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**September 12, 1994 - 9 a.m.** – Public Hearing  
Department of Professional and Occupational Regulation, 5th Floor, Conference Room 3, 3600 West Broad Street, Richmond, Virginia.

**October 8, 1994** – Written comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board for Hearing Aid Specialists intends to amend regulations entitled: **VR 375-01-02. Board of Hearing Aid Specialists Regulations.** The proposed regulations define additional terminology, clarify entry criteria for licensure, establish examination provisions incorporating board policy, clarify renewal and reinstatement procedures and the provisions regarding standards of practice and conduct, and adjust licensing fees as needed in accordance with § 54.1-113 of the Code of Virginia. All other amendments are for clarity, simplicity and readability.

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

**Contact:** Karen O'Neal, Assistant Director, Board for Hearing Aid Specialists, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500.

## COMMISSION ON THE FUTURE OF HIGHER EDUCATION IN VIRGINIA

**September 14, 1994 - 10 a.m.** – Open Meeting  
General Assembly Building, 910 Capitol Square, Senate Room A, Richmond, Virginia. ☒

The commission was created by SJR 139 and is charged with considering a variety of topics that are of interest to higher education in Virginia.

**Contact:** Anne M. Pratt, Associate Director, 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2629.

## STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

**September 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 Council of Higher Education for Virginia intends to adopt regulations entitled: **VR 380-04-01. Virginia Postsecondary Review Entity Regulations.** The proposed regulations establish the procedures and standards by which the SPRE may review institutions participating in the Title IV, HEA programs.

Statutory Authority: §§ 23-9.6:1 and 23-261 of the Code of Virginia.

**Contact:** Richard Myers, State Council of Higher Education for Virginia, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 225-3189.

## VIRGINIA HIV PREVENTION COMMUNITY PLANNING COMMITTEE

† **September 1, 1994 - 8 a.m.** – Open Meeting  
† **September 16, 1994 - 8 a.m.** – Open Meeting  
Holiday Inn Airport, 5203 Williamsburg Road, Sandston, Virginia. ☒

A meeting to continue prioritization of target populations and identification of strategies that can reduce the transmission of HIV.

**Contact:** Elaine Martin, Coordinator, AIDS Education, P. O. Box 2448, Richmond, VA 23218, telephone (804) 786-0877 or toll free 1-800-533-4148/TDD ☎

## HOPEWELL INDUSTRIAL SAFETY COUNCIL

**September 6, 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.

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† **September 8, 1994 - Noon** – Open Meeting  
Williamsburg Lodge and Conference Center, Room B, Williamsburg, Virginia. ☒

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

**Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere St., Richmond, VA 23220, telephone (804) 782-1986.

## VIRGINIA'S INTERCOMMUNITY TRANSITION COUNCIL

† **September 13, 1994 - 9:30 a.m.** – Open Meeting  
Holiday Inn Fair Oaks, 1787 Lee Jackson Memorial Highway, Fairfax, Virginia. ☒ (Interpreter for the deaf provided upon request)

State and local representatives from 13 state agencies and representatives of the business and consumer community form the Virginia Intercommunity Transition Council (VITC). The VITC meets quarterly to focus on strategic targets to move Virginia forward in the development of statewide and systematic transition services for all youth with disabilities. Eleven-thirty to 12:30 of every meeting is designated for public comment to enable persons or groups who are not standing members of the VITC to express opinions and recommendations to the VITC regarding transition issues.

**Contact:** Kathy Trosci, Education Services Manager, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23288-0300, telephone (804) 662-7606 or toll-free 1-800-552-5019; or Sharon deFur, Associate Specialist/Transition, Monroe Bldg., 23rd Floor, Richmond, VA 23216, telephone (804) 225-3242.

# Calendar of Events

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## HJR NO. 76 INTERNET STAFF STUDY TEAM

August 25, 1994 - 10 a.m. - Open Meeting  
September 22, 1994 - 10 a.m. - Open Meeting  
Department of Information Technology, Richmond Plaza  
Building, 3rd Floor, Richmond, Virginia. ☒

A meeting to study whether the Commonwealth needs to establish protocols and guidelines regarding in-state access to the myriad files and components available through the Internet.

Contact: Marty Gillespie, Department of Information Technology, Director of Security, 110 S. 7th St., 3rd Floor, Richmond, VA 23219, telephone (804) 344-5705.

## DEPARTMENT OF LABOR AND INDUSTRY

### Virginia Apprenticeship Council

September 1, 1994 - 10 a.m. - Open Meeting  
Capitol Building, House Room 4, Richmond, Virginia. ☒

A regular meeting of the council to discuss and/or act on a schedule for future meeting dates, and update of Apprenticeship Council bylaws.

Contact: Robert S. Baumgardner, Director, Apprenticeship Division, Virginia Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-2382.

## STATE LAND EVALUATION ADVISORY COUNCIL

September 20, 1994 - 1 p.m. - Open Meeting  
Department of Taxation, 2220 West Broad Street,  
Richmond, Virginia. ☒

A meeting to adopt suggested ranges of values for agricultural, horticultural, forest and open-space land use and the use-value assessment program.

Contact: Ronald W. Wheeler, Executive Assistant, Department of Taxation, 3600 W. Broad St., Richmond, VA 23219, telephone (804) 367-6920.

## STATE COUNCIL ON LOCAL DEBT

September 21, 1994 - 11 a.m. - Open Meeting  
James Monroe Building, 101 N. 14th Street, 3rd Floor,  
Treasury Board Conference Room, Richmond, Virginia. ☒

A regular 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

### Executive Committee

† August 30, 1994 - 10 a.m. - Open Meeting  
411 East Franklin Street, Suite 600, Richmond, Virginia. ☒

A meeting to conduct routine business.

Contact: William F. Dorrill, President, Longwood College, 201 High St., Farmville, VA 23909-1899, telephone (804) 395-2001.

## STATE LOTTERY BOARD

### NOTE: CHANGE IN MEETING DATE

August 29, 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

August 23, 1994 - 9:30 a.m. - Open Meeting  
Marine Resources Commission, 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, Marine Resources 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)

† **October 21, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-03-3.1100. Amount, Duration, and Scope of Services: (Reimbursement for Organ Transplant Services)**. The purpose of this proposal is to amend the state plan to clarify the requirements and process for determining the level of reimbursement available for covered transplant services.

As a result of court action in which the Department of Medical Assistance Services (DMAS) was required to reimburse providers for covered transplantation services, DMAS developed the current state plan amendment. At that time, emergency (and subsequently final) regulations were promulgated which stated that reimbursement for covered transplant services and any other medically necessary transplantation procedures that are determined to not be experienced or investigational would be based upon a rate negotiated with providers on an individual basis, or a flat rate by procedure, or by procedure and facility.

This proposed regulation is intended to describe more specifically the reimbursement process that has been in effect since the promulgation of the current regulation. In summary, reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures shall be a fee based upon the greater of a prospectively determined, procedure-specific, flat fee determined by the agency, or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover all procurement costs, hospital costs, and physician costs, including such physicians as radiologists, pathologists, oncologists, surgeons, etc., but will not include pre- and post-hospitalization for the transplant procedure or pre-transplant evaluation. In addition, reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for procedures performed in state.

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

Written comments may be submitted through October 21, 1994, to Betty Cochran, Director, 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.

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**August 26, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-8.16. DMAS-122 Adjustment Process**. The purpose of this action is to establish and clarify by regulation the DMAS-122 adjustment process for Medicaid recipients in long-term care facilities. Specifically, the roles of the Department of Medical Assistance Services and the Department of Social Services will be clarified. This process is federally mandated and is not a new requirement.

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

Written comments may be submitted through August 26, 1994, to Mary Chiles, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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**August 26, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-10-2500. Medicaid Financial Eligibility Requirements - Families and Children**. The purpose of this action is to promulgate state regulations which describe the methods and procedures to be used in setting standards and determining eligibility for Aid to Families With Dependent Children-related medical assistance.

Because eligibility for receipt of Title XIX services is based on income and resources, when determining Medicaid eligibility it is necessary to determine the income and resources available to each individual in a

# Calendar of Events

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family to determine whether that individual is eligible for Medicaid. Presently, Medicaid eligibility is determined in "family and children" cases by dividing the family unit into separate budget units when children have their own income to ensure that the income of the child is not deemed available to the support of his parent or his sibling. These regulations revise the methodologies for determining income and resource eligibility under Medicaid, including the financial responsibility of relatives, and for determining how the income and resources of members of families are to be considered during the determination of eligibility for Medicaid.

These proposed regulations track federal regulations published January 1, 1993, except in one significant area, "deeming," which is specifically prohibited under § 1902(a)(17)(D) of the Social Security Act. Only the income and resources of a parent for a child or of a spouse for a spouse may be deemed to be available if they are living together. In order to assure that the individual standards of Medicaid applicants are not reduced by the presence of any nonlegally responsible relative in the assistance unit, these individuals will be removed from the unit before the standards are prorated for individuals remaining in the unit.

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

Written comments may be submitted through August 26, 1994, to Ann Cook, Eligibility Consultant, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

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**September 23, 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 Medical Assistance Services intends to adopt regulations entitled: **VR 460-01-53, 460-01-53.1, 460-01-53.2, and 460-02-4.1730. Liens and Recoveries: OBRA 93 Estate Recoveries.** The purpose of this action is to amend the Plan for Medical Assistance concerning estate recoveries consistent with the requirements of OBRA 93 § 13612 and of §§ 32.1-326.1 and 32.1-327 of the Code of Virginia. The process of recovering funds when they have been expended for persons who had their own resources, but did not use them for their own medical care, returns general fund dollars to the Commonwealth.

Sections 32.1-326.1 and 32.1-327 of the Code of Virginia provide for the recovery, by the Title XIX agency, of

expenditures for certain services from the estates of recipients. The Omnibus Budget Reconciliation Act of 1993 § 13612 (OBRA 93) permitted the recovery of Title XIX expended funds from the estates of individuals for all Medicaid covered services. The inclusion of states' estate recovery policies in their state plans for medical assistance was required by the cited OBRA section. Since 1984, DMAS has exercised its authority under state law and recovered expenditures for all Medicaid covered services. The fact that the new federal law makes recovery of institutional payments mandatory, but this degree of recovery an option for states lacking similar state authority, is what causes this regulatory action to be subject to the Article 2 requirements of the Administrative Process Act.

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

Written comments may be submitted through September 23, 1994, to Jesse R. Garland, Director, Fiscal Division, 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.

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**September 23, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-02-4.1920, Methods and Standards for Establishing Payment Rates—Other Types of Care; VR 460-03-4.1921, Fees for Pediatric and Obstetric CPT Procedures; VR 460-03-4.1924, State Agency Fee Schedule: Resource Based Relative Value Scale.** The purpose of this proposal is to implement a new medical and surgical fee schedule for the agency which is based on the federal RBRVS. The program reimburses fee-for-service providers the lower of the state agency fee schedule or their actual charge to the general public. The 1994 Appropriations Act § 1-88(313)(W) directs the Board of Medical Assistance Services (BMAS) to develop a RBRVS-based physician fee schedule for approval by the HCFA. RBRVS-based reimbursement links the fee for a service to research-based estimates of the resources necessary to provide that service.

Prior to January 1, 1992, HCFA also used a fee schedule based on provider charges to reimburse physicians for their services rendered to Medicare beneficiaries. However, HCFA concluded that the fees it paid for services did not have a consistent, rational relationship to the actual resources utilized to provide

those services. Therefore, HCFA developed a RBRVS-based fee schedule. HCFA assigned a "relative value" to each service expressed in relative value units (RVUs). HCFA computes the fee for a service by multiplying its RVUs times one of three conversion factors (CFs) which it developed for different types of services. The Department of Medical Assistance Services (DMAS) is amending HCFA's RVUs for its RBRVS-based fee schedule. DMAS will use HCFA's CFs after they have been adjusted by an additional factor to maintain budget neutrality. DMAS may revise the additional factor whenever HCFA updates its RVUs or CFs so that no change in expenditure will result solely from such update. DMAS will estimate RBRVS-type fees for services that have no HCFA RVUs and use existing fees for services for which it is unable to estimate an RBRVS-type fee. The RBRVS-based fees will be effective July 1, 1995, and will be phased in over a three-year period. There will be one fee schedule for the entire state with no geographic adjusters.

Implementation of the RBRVS-based fee schedule will affect each provider differently depending on the types of services provided since the allowable fee will increase for some services and decrease for others. The agency projects no significant negative issues involved in implementing this proposed change. The primary advantage of this regulation is that reimbursement for primary care services will be enhanced.

This change to the fee schedule is undertaken only after obtaining input from the physician community. During 1993, DMAS convened an advisory committee composed of physicians selected by professional societies throughout the state. After several months of deliberation, a majority of this group voted to recommend to the department that it proceed to seek authorization to implement a RBRVS-based fee schedule. The details of the present proposal are consistent with the recommendations of the committee. All physician providers and some nonphysician providers (such as nurse practitioners) throughout the state will be affected. Provided there are no changes in the types of services provided as a result of the new fee schedule, there should be no impact on Medicaid recipients and the implementation of the new fee schedule should be budget neutral. Medicaid spent approximately \$205 million (total funds) for these services in SFY 94, and expects to spend \$244.8 million (total funds) in SFY 95. There are no localities which are uniquely affected by these regulations as they apply statewide.

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

Written comments may be submitted through September 23, 1994, to Scott Crawford, Manager, Division of Cost Settlement and Audit, 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.

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**October 7, 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 Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1. Nursing Home Payment System (Balloon Loan Financing)**. The purpose of this action is to amend the State Plan for Medical Assistance to specifically address existing reimbursement policies relating to balloon loan financing, in light of regulations addressing refinancing for nursing facilities. This amendment is the result of policies adopted by the Board of Medical Assistance Services on December 14, 1992, regarding refinancing of balloon loans in response to requests by providers that DMAS establish a policy for balloon loan financing based on current State Plan language. This action incorporates the specific language of the balloon loan financing policy into the State Plan.

The Nursing Home Payment System (NHPS) provides that costs incurred due to a refinancing cannot exceed the total costs that would have been allowable had the refinancing not occurred. This could be interpreted to prohibit reimbursement for the refinancing of a balloon loan at the expiration of the term of the original note since payment of the balloon principal would eliminate the debt on the nursing facility and the associated interest cost to the Medicaid program. Providers were asking for a specific policy to address balloon loan financing due to the reluctance of financial institutions to make long-term loans to the health care industry.

The department developed this policy in 1992 to accommodate the needs of the provider community at a minimum cost to the Medicaid program. Under this policy as promulgated, § 2.4 of the NHPS would permit the refinancing of a balloon loan as limited by the procedures.

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

Written comments may be submitted until October 7, 1994, to Richard Weinstein, Manager, Division of Cost Settlement, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

**Contact:** Victoria P. Simmons, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804)

# Calendar of Events

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371-8850.

## Drug Utilization Review Board

† **September 22, 1994 - 3 p.m.** – Open Meeting  
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

A regular meeting of the board to conduct routine business. A brief organizational meeting of the Medicaid Prior Authorization Advisory Committee will also be held.

**Contact:** Carol B. Pugh, Pharm.D., DUR Program Consultant, Client Services Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3820.

## BOARD OF MEDICINE

### Informal Conference Committee

† **August 24, 1994 - 10 a.m.** – Open Meeting  
Holiday Inn-Hotel Tanglewood, 4468 Starkey Road, S.W., Roanoke, Virginia. ☒

† **August 30, 1994 - 9 a.m.** – Open Meeting  
Sheraton Inn, I-95 and Va. Rt. 3, 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, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908 or (804) 662-9943/TDD ☎

### Legislative Committee

**September 9, 1994 - 10 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. ☒

The committee will meet to develop a recommendation to the full board on "short term use" of pharmacotherapy for weight loss; develop regulations for licensure by endorsement for doctors of chiropractic; develop regulations for implementation of House Bill 266 relating to unprofessional conduct; develop regulations for implementation of Senate Bill 474; and such other business that may be presented. The chairperson will entertain public comments following the adoption of the agenda for 10 minutes on any agenda items.

**Contact:** Eugenia K. Dorson, Deputy Executive Director of 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 Physician's Assistants

**September 9, 1994 - 2 p.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 3, Richmond, Virginia. ☒

The Advisory Committee on Physician's Assistants will (i) review the board's position on home care (house calls); (ii) review and adopt the additions to the list of approved schools; and (iii) review such other business that may be presented. There will be a 10 minute period for public comments on specific agenda items.

**Contact:** Eugenia K. Dorson, Deputy Executive Director of Licensing, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9923 or (804) 662-7197/TDD ☎

## DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES (STATE BOARD OF)

† **September 9, 1994 - 10 a.m.** – Public Hearing  
James Monroe Building, 101 North 14th Street, Conference Room C, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A meeting to obtain public comment on the Community Mental Health Services Block Grant application for FFY 1995 and state 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 ☎

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**September 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 State Mental Health, Mental Retardation and Substance Abuse Services Board intends to repeal regulations entitled: **VR 470-01-01. Public Participation Guidelines** and adopt regulations entitled: **VR 470-01-01:1. Public Participation Guidelines**. The purpose of this regulation is to adopt Public Participation Guidelines in conformance with § 9-6.14:7.1 of the Code of Virginia.

Statutory Authority: §§ 9-6.14:7.1 and 37.1-10 of the Code of Virginia.

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

## VIRGINIA MENTAL HEALTH PLANNING COUNCIL

**August 31, 1994 - 10 a.m. – Open Meeting**  
Henrico County Mental Health and Retardation Services, 10299 Woodman Road, Glen Allen, Virginia. ☒ (Interpreter for the deaf provided upon request)

The council meets at least four times a 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 MOTOR VEHICLES

### Motor Vehicle Dealers' Advisory Board

**September 7, 1994 - 9:30 a.m. – Open Meeting**  
Department of Motor Vehicles Headquarters, 2300 West Broad Street, Room 702, Richmond, Virginia. ☒

A scheduled meeting of the board. No public comment will be received at this meeting.

**Contact:** L. Stephen Stupasky, Manager, Dealer Services, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269-0001, telephone (804) 367-2921 or (804) 367-0261.

### Medical Advisory Board

† **August 31, 1994 - 1 p.m. – Open Meeting**  
Department of Motor Vehicles, 2300 West Broad Street, Richmond, Virginia. ☒

A regular business meeting open to the public.

**Contact:** Karen Ruby, Manager, Department of Motor Vehicles, 2300 W. Broad St., Richmond, VA 23269, telephone (804) 367-0481.

## VIRGINIA MUSEUM OF NATURAL HISTORY

### Board of Trustees

† **September 17, 1994 - 9 a.m. – Open Meeting**  
Virginia Museum of Natural History, 1001 Douglas Avenue,

Martinsville, Virginia. ☒

A meeting to include reports from the executive, finance, legislative, marketing, outreach, personnel, planning/facilities, and research and collections committees. Public comment will be received following approval of the minutes of the April meeting.

**Contact:** Rhonda J. Knighton, Executive Secretary, Virginia Museum of Natural History, 1001 Douglas Ave., Martinsville, VA 24112, telephone (703) 666-8616 or (703) 666-8638/TDD ☎

## BOARD OF NURSING

† **September 19, 1994 - 9 a.m. – Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Rooms 2 and 3, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

Two special conference committees will 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 St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

† **September 20, 1994 - 9 a.m. – Open Meeting**  
† **September 21, 1994 - 9 a.m. – Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, 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 beginning at 11 a.m. on Tuesday, September 20, 1994.

**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 or (804) 662-7197/TDD ☎

† **September 22, 1994 - 8:30 a.m. – Open Meeting**  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings. If the agenda for the panel 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,

# Calendar of Events

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Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909 or (804) 662-7197/TDD ☎

## Nurse Aide Registry

† **August 30, 1994 - 10 a.m.** – Open Meeting  
Louise Obici Hospital, 1900 North Main Street, Hospital Library Classroom, Suffolk, Virginia. ☒ (Interpreter for the deaf provided upon request)

† **August 30, 1994 - 10:30 a.m.** – Open Meeting  
Oak Meadow Nursing Home, 1510 Collingswood Road, Alexandria, Virginia. ☒ (Interpreter for the deaf provided upon request)

A formal hearing with certified nurse aides to determine what, if any, action should be recommended to the board. 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 ☎

## VIRGINIA OUTDOORS FOUNDATION

† **August 29, 1994 - 10 a.m.** – Open Meeting  
James Monroe Building, 101 North 14th Street, 3rd Floor, Treasury Board Conference Room, Richmond, Virginia. ☒

A general business meeting. Agenda available on request.

**Contact:** Leslie H. Grayson, Acting Executive Director, P.O. Box 322, Aldie, VA 22001, telephone (703) 327-6118.

## VIRGINIA POLYGRAPH EXAMINERS ADVISORY BOARD

† **September 20, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. #F3001 5

A meeting to administer the Polygraph Examiners Licensing examination to eligible examiner interns and to consider other matters which may require board action. 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 any accommodation in order to participate in the meeting should contact Nancy T. Feldman 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 OF PROFESSIONAL COUNSELORS

† **September 16, 1994 - 9 a.m.** – Open Meeting  
† **September 17, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☒ (Interpreter services for the deaf provided upon request)

A regular meeting of the Virginia Board of Professional Counselors to consider committee reports, act on correspondence, conduct regulatory review, and consider any other matters under the jurisdiction of the board. This is a public meeting and there will be a half-hour public comment period from 9:15 a.m. to 9:45 a.m.

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

## Advisory Board on Rehabilitation Providers

† **September 15, 1994 - 9 a.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☒ (Interpreter for the deaf provided upon request)

An organizational meeting to adopt bylaws, elect officers, identify tasks, etc., related to the certification of rehabilitation providers. Public comments will not be received.

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

## BOARD OF PROFESSIONAL AND OCCUPATIONAL REGULATION

† **September 27, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒

A regular quarterly meeting of the board. Agenda items include discussion of survey results from survey on locksmiths, final recommendation on property manager study of 1993, and election of chairperson and vice-chairperson.

**Contact:** Joyce K. Brown, Secretary to the Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564 or (804) 367-9753/TDD ☎

† **September 27, 1994 - 7 p.m.** – Public Hearing  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

The board will conduct a public hearing in connection with its study of the feasibility of establishing a licensing program for locksmiths. The study is a result of House Joint Resolution 181 and Senate Joint Resolution 134, both of which passed in the 1994 session of the Virginia General Assembly.

**Contact:** Joyce K. Brown, Secretary to the Board, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8564 or (804) 367-9753/TDD ☎

## BOARD OF PSYCHOLOGY

### Advisory Committee on Certified Practices

† **September 15, 1994 - 1 p.m.** – Open Meeting  
Department of Health Professions, 6606 West Broad Street,  
5th Floor, Conference Room 3, Richmond, Virginia. ☒  
(Interpreter for the deaf provided upon request)

An organizational meeting to adopt the bylaws, elect officers, identify tasks, etc., related to the certification of sex offender treatment providers. Public comments will not be received.

**Contact:** Evelyn B. Brown, Executive Director, Board of Psychology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9913.

## REAL ESTATE APPRAISER BOARD

† **August 25, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

An informal fact-finding conference in regard to the Real Estate Appraiser Board v. Elbert B. Smith, Jr. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act.

**Contact:** Carol A. Mitchell, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

† **August 25, 1994 - 11 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

An informal fact-finding conference in regard to the Real Estate Appraiser Board v. George H. Barnett, Jr. Persons desiring to participate in the meeting and

requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act.

**Contact:** Carol A. Mitchell, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

**September 20, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

A general business meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodations at least two weeks in advance for consideration of your request.

**Contact:** Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

## Complaints Committee

**August 31, 1994 - 10 a.m.** – Open Meeting  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

A meeting to review complaints. Persons desiring to participate in the meeting and requiring special accommodations or interpretive services should contact Karen W. O'Neal. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request for accommodation at least two weeks in advance for consideration of your request.

**Contact:** Karen W. O'Neal, Assistant Director, Real Estate Appraiser Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500 or (804) 367-9753/TDD ☎

## REAL ESTATE BOARD

**August 23, 1994 - 9 a.m.** – Canceled  
Department of Professional and Occupational Regulation,  
3600 West Broad Street, Richmond, Virginia. ☒

The formal hearing in regard to the Real Estate Board v. Larry J. Timbrook, File Number 93-00594, has been canceled.

**Contact:** Barbara B. Tinsley, Legal Assistant, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8589.

† **August 31, 1994 - 8:30 a.m.** – Open Meeting

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Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☒ (Interpreter services for the deaf provided upon request)

A regular business meeting of the board to include review of investigative matters, consideration of applications, and various requests to the board for information.

**Contact:** Joan L. White, Assistant Director, Real Estate Board, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552.

## REFORESTATION OF TIMBERLANDS BOARD

† **September 21, 1994 - 10 a.m.** – Open Meeting  
Department of Forestry Headquarters Building, 900 Natural Resources Drive, Charlottesville, Virginia.

A meeting to conduct general business and to review accomplishments.

**Contact:** Phil T. Grimm, Assistant Chief, Forest Management, P.O. Box 3758, Charlottesville, VA 22903, telephone (804) 977-6555.

## STATE REHABILITATION ADVISORY COUNCIL

**September 23, 1994 - 10 a.m.** – Open Meeting  
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A regular quarterly meeting.

**Contact:** Dr. Ronald C. Gordon, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019 or (804) 662-9040/TDD ☎

## VIRGINIA RESOURCES AUTHORITY

† **September 13, 1994 - 9:30 a.m.** – Open Meeting  
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of August 9, 1994; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

† **October 11, 1994 - 9:30 a.m.** – Open Meeting  
Virginia Resources Authority, The Mutual Building, 909 East Main Street, Board Room, Suite 607, Richmond, Virginia.

The board will meet to approve minutes of the meeting of September 13, 1994; to review the authority's operations for the prior months; and to consider other matters and take other actions as it may deem appropriate. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting. Public comments will be received at the beginning of the meeting.

**Contact:** Shockley D. Gardner, Jr., Virginia Resources Authority, 909 E. Main St., Suite 607, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

## SEWAGE HANDLING AND DISPOSAL APPEALS REVIEW BOARD

**September 21, 1994 - 10 a.m.** – Open Meeting  
County of Henrico, Administrative Building, 4301 East Parham Road, Board of Supervisors Board Room, Richmond, Virginia. ☒

A meeting to hear all administrative appeals of denials of onsite sewage disposal systems permits pursuant to §§ 32.1-166.1 et seq. and 9-6.14:12 of the Code of Virginia and VR 355-34-02.

**Contact:** Constance G. Talbert, Secretary to the Board, 1500 E. Main St., P.O. Box 2448, Suite 117, Richmond, VA 23218, telephone (804) 786-1750.

## DEPARTMENT OF SOCIAL SERVICES (STATE BOARD OF)

**October 7, 1994** – Written comments may be submitted through this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to amend regulations entitled: **VR 615-01-29. Aid to Families with Dependent Children (AFDC) Program - Disregarded Income and Resources.** The proposed regulation modifies AFDC regulations to require that all bona fide loans be disregarded in the evaluation of financial eligibility for benefits. The regulation defines what is required for a loan to be considered bona fide.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Written comments may be submitted through October 7, 1994, to Constance O. Hall, AFDC Program Manager, Division of Benefit Programs, Department of Social Services, 730 East Broad Street, Richmond, Virginia

23219-1849.

**Contact:** Peggy Friedenber, Policy Analyst, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1820.

## VIRGINIA SOIL AND WATER CONSERVATION BOARD

**September 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 Virginia Soil and Water Conservation Board intends to amend regulations entitled: **VR 625-02-00. Erosion and Sediment Control Regulations.** Sections 10.1-502 and 10.1-561 of the Code of Virginia authorize the Virginia Soil and Water Conservation Board to promulgate regulations to implement the Erosion and Sediment Control Law. This action is necessary to amend the existing regulations which became effective September 13, 1990, due to the passage of Chapter 925 of the 1993 Virginia Acts of Assembly and other legislative changes since last amendment. The regulations establish minimum statewide standards for the control of soil erosion, sediment deposition and nonagricultural runoff from land-disturbing activities that must be met in local erosion and sediment control programs, and also by state agencies that conduct land-disturbing activities. Land-disturbing activities include, but are not limited to, clearing, grading, excavating, transporting and filling of land.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

**Contact:** James P. Edmonds, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3997 or FAX (804) 786-1798.

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**September 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 Virginia Soil and Water Conservation Board intends to adopt regulations entitled: **VR 625-02-01. Erosion and Sediment Control Certification Regulations.** The proposed regulations establish minimum statewide standards for the certification of erosion and sediment control plan reviewers, inspectors, and program administrators. The regulations provide four classifications of certification: Program Administrator, Plan Reviewer, Inspector, and Combined Administrator. In addition, the regulations provide for eligibility requirements, fees, examinations, applications, and discipline of certified personnel. Training will be based upon the Erosion and Sediment

Control Law and attendant regulations which establish minimum statewide standards for the control of soil erosion, sediment deposition and nonagricultural runoff from land-disturbing activities. Land-disturbing activities include, but are not limited to, clearing, grading, excavating, transporting and filling of land. Certification will be based upon completion of the training programs, work experience or combination thereof, plus obtaining a passing grade on the certification test. Recertification and decertification are also covered by the regulations.

Statutory Authority: §§ 10.1-502 and 10.1-561 of the Code of Virginia.

**Contact:** James P. Edmonds, Urban Conservation Engineer, Department of Conservation and Recreation, 203 Governor St., Suite 206, Richmond, VA 23219, telephone (804) 786-3997 or FAX (804) 786-1798.

## TREASURY BOARD

**September 21, 1994 - 9 a.m.** – Open Meeting  
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☒

A regular meeting of the board.

**Contact:** Gloria J. Hatchel, Administrative Assistant to the Treasurer, Department of the Treasury, 101 N. 14th St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.

## BOARD OF VETERINARY MEDICINE

† **August 23, 1994 - 9 a.m.** – Open Meeting  
† **August 24, 1994 - 9 a.m.** – Open Meeting  
Holiday Inn Executive Center, 5655 Greenwich Road, Virginia Beach, Virginia. ☒ (Interpreter for the deaf provided upon request)

Informal conferences.

**Contact:** Terri H. Behr, Administrative Assistant, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9915 or (804) 662-7197/TDD ☎

## VIRGINIA RACING COMMISSION

**August 31, 1994 - 9:30 a.m.** – Open Meeting  
State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, Virginia. ☒

A meeting to discuss applications to construct, own and operate a racetrack.

**Contact:** William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208,

# Calendar of Events

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telephone (804) 371-7363.

## VIRGINIA VOLUNTARY FORMULARY BOARD

**September 12, 1994 - 10 a.m.** – Public Hearing  
James Madison Building, 109 Governor Street, Main Floor  
Conference Room, Richmond, Virginia.

A public hearing to consider the proposed adoption and issuance of revisions to the Virginia Voluntary Formulary. The proposed revisions to the Formulary add and delete drugs and drug products to the Formulary that became effective on May 1, 1994. Copies of the proposed revisions to the Formulary are available for inspection at the Department of Health, Bureau of Pharmacy Services, James Madison Building, 109 Governor Street, Richmond, Virginia 23219. Written comments sent to the above address and received prior to 5 p.m. on September 12, 1994, will be made a part of the hearing record.

**Contact:** James K. Thomson, Bureau of Pharmacy Services, Virginia Voluntary Formulary Board, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

† **October 27, 1994 - 10:30 a.m.** – Open Meeting  
Washington Building, 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, Bureau of Pharmacy Services, Virginia Voluntary Formulary Board, 109 Governor St., Room B1-9, Richmond, VA 23219, telephone (804) 786-4326.

## VIRGINIA WAR MEMORIAL FOUNDATION

† **August 29, 1994 - Noon** – Open Meeting  
Virginia War Memorial, 621 Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting.

**Contact:** Jon C. Hatfield, Acting Deputy Director, Division of Engineering and Buildings, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ☎

## VIRGINIA WASTE MANAGEMENT BOARD

**September 7, 1994 - 7 p.m.** – Public Hearing  
Department of Environmental Quality, Innsbrook Corporate Center, 4900 Cox Road, Glen Allen, Virginia.

**September 8, 1994 - 7 p.m.** – Public Hearing

Clinch Valley College, Wise, Virginia.

**October 7, 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 Waste Management Board intends to adopt regulations entitled **VR 672-20-20. Regulation Governing Management of Coal Combustion By-Products.** The purpose of the proposed regulation is to provide for the use of coal combustion by-products and to establish appropriate standards for siting, design, construction, operation and administrative procedures pertaining to their use, reuse, or reclamation. The board seeks specific comments regarding clarification or the need for testing schedules (frequency/volumes) for TCLP tests for coal combustion by-products as presented in § 4.1 C 4.

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

Written comments may be submitted through October 7, 1994, to Deborah G. Pegram, Hearing Reporter, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009.

**Contact:** Walt Gulevich, Office Director, Department of Environmental Quality, P. O. Box 10009, Richmond, Virginia, 23240-0009, telephone (804) 762-4218.

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**August 30, 1994 - 10 a.m.** – Public Hearing  
Department of Environmental Quality Board Room, Innsbrook Office Park, 4900 Cox Road, Glen Allen, Virginia.

**September 8, 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 Virginia Waste Management Board intends to adopt regulations entitled **VR 672-60-1. Waste Tire End User Reimbursement.** This regulation provides the guidelines for the partial reimbursement, from the Waste Tire Trust Fund, of the end users of Virginia generated waste tires. The promulgation of VR 672-60-1 is exempt from the requirements of the Administrative Process Act pursuant to § 9-6.14:4.1 B of the Act.

Statutory Authority: §§ 10.1-1402.11, 10.1-1422.3 and 10.1-1422.4 of the Code of Virginia.

**Contact:** Allan Lassiter, Manager, Waste Tire Program, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, telephone (804) 762-4215.

## STATE WATER CONTROL BOARD

**August 22, 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, 629 E. Main St., P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4379.

## BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† **September 1, 1994 - 11 a.m. - Open Meeting**  
Alcoholic Beverage Control Board, District Office, 3023 Peters Creek Road, Roanoke, Virginia. ☒

A meeting to conduct an informal fact-finding conference in regard to the Board for Waterworks and Wastewater Works Operators v. David George Petrus. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the department at (804) 367-8500. The department fully complies with the Americans with Disabilities Act.

**Contact:** Carol A. Mitchell, Assistant Director, Board for Waterworks and Wastewater Works Operators, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8524.

## THE COLLEGE OF WILLIAM AND MARY

### Board of Visitors

† **August 22, 1994 - 2 p.m. - Open Meeting**  
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia. ☒

A called meeting of the Executive Committee of the Board of Visitors to consider resolutions on faculty matters and restructuring plans for Richard Bland College and the College of William and Mary. An informational release will be available four days prior to the board meeting for those individuals or organizations who request it.

**Contact:** William N. Walker, Director, Office of University Relations, Lambert House, College of William and Mary, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2630.

† **September 8, 1994 - 8 a.m. - Open Meeting**  
† **September 9, 1994 - 8 a.m. - Open Meeting**  
Blow Memorial Hall, Richmond Road, Williamsburg, Virginia. ☒

A regularly scheduled meeting of the Board of Visitors

to receive reports from several committees of the board, and to act on those resolutions that are presented by the administrations of the College of William and Mary and Richard Bland College. An informational release will be available four days prior to the board meeting for those individuals or organizations who request it.

**Contact:** William N. Walker, Director, Office of University Relations, Lambert House, College of William and Mary, P.O. Box 8795, Williamsburg, VA 23187-8795, telephone (804) 221-2630.

## BOARD OF YOUTH AND FAMILY SERVICES

† **September 8, 1994 - 8:30 a.m. - Open Meeting**  
700 Centre Building, 7th and Franklin Streets, 4th Floor, Richmond, Virginia. ☒

Committee meetings will be held from 8:30 a.m. to 10 a.m. A general meeting will be held from 10 a.m. to 5 p.m. to review programs recommended for certification or probation, to consider adoption of draft policies, and to consider other matters that may come before the board.

**Contact:** Donald R. Carignan, Policy Coordinator, Department of Youth and Family Services, P.O. Box 1110, Richmond, VA 23208-1110, telephone (804) 371-0692.

## LEGISLATIVE

### HOUSE COMMITTEE ON AGRICULTURE

**August 24, 1994 - 10 a.m. - Open Meeting**  
**August 25, 1994 - 10 a.m. - Open Meeting**  
Stratford Inn, 2500 Riverside Drive, Danville, Virginia.

A two day retreat is scheduled beginning with Commissioner Courter describing possible policy initiatives and future plans for the agency. There will also be presentations by representatives of the various sectors of the tobacco industry. On the second day, there will be a tour of a tobacco farm and processing plant. At 1:30 p.m. on the 25th, there will be a meeting of HJR 224 (Tobacco Farming) at the Stratford Inn.

**Contact:** Martin Farber, Research Associate, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

# Calendar of Events

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## VIRGINIA CODE COMMISSION

### Title 15.1 Recodification Task Force

September 28, 1994 - 10 a.m. - Open Meeting  
October 20, 1994 - 10 a.m. - Open Meeting  
General Assembly Building, 910 Capitol Street, 6th Floor  
Conference Room, Richmond, Virginia. ☒

A meeting to review working documents for Title 15.1 recodification.

Contact: Michelle L. Browning, Operations Staff Assistant, Division of Legislative Services, General Assembly Building, 910 Capitol St., 2nd Floor, Richmond, VA 23219, telephone (804) 786-3591.

### JOINT SUBCOMMITTEE STUDYING STATE AND FEDERAL LAW ON PRIVACY, CONFIDENTIALITY AND MANDATORY DISCLOSURE OF INFORMATION HELD OR USED BY GOVERNMENTAL AGENCIES

August 22, 1994 - 10 a.m. - Open Meeting  
General Assembly Building, 910 Capitol Street, House Room C, Richmond, Virginia.

The subcommittee will meet for the purpose of hearing recommendations. HJR 66.

Contact: Ginny Edwards, Staff Attorney, Division of Legislative Services, 910 Capitol St., Richmond, VA 23219, telephone (804) 786-3591.

## CHRONOLOGICAL LIST

### OPEN MEETINGS

#### August 22

Agricultural Council, Virginia  
Alcoholic Beverage Control Board  
Disclosure of Information Held or Used by Governmental Agencies, Joint Subcommittee Studying State and Federal Law on Privacy, Confidentiality and Mandatory  
Water Control Board, State  
† William and Mary, College of  
- Board of Visitors

#### August 23

† Auctioneers Board  
Marine Resources Commission  
† Veterinary Medicine, Board of

#### August 24

† Agriculture and Consumer Services, Department of  
- Virginia Farmers' Market Board  
Agriculture, House Committee on  
Chesapeake Bay Local Assistance Board  
- Southern Area Review Committee  
Environmental Quality, Department of  
- Hazardous Waste Technical Advisory Committee  
† Medicine, Board of  
† Veterinary Medicine, Board of

#### August 25

Agriculture, House Committee on  
Compensation Board  
Game and Inland Fisheries, Board of  
HJR No. 76 Internet Staff Study Team  
† Real Estate Appraiser Board

#### August 26

Game and Inland Fisheries, Board of

#### August 29

† Lottery Board, State  
† Virginia Outdoors Foundation  
† War Memorial Foundation, Virginia

#### August 30

Architects, Professional Engineers, Land Surveyors and Landscape Architects, Board for  
Environmental Quality, Department of  
† Game and Inland Fisheries, Board of  
Health Services Cost Review Council  
† Longwood College  
- Executive Committee  
† Medicine, Board of  
† Nursing, Board of  
- Nurse Aide Registry

#### August 31

† Game and Inland Fisheries, Board of  
† Health Professions, Board of  
Mental Health Planning Council, Virginia  
† Motor Vehicles, Department of  
- Medical Advisory Board  
Real Estate Appraiser Board  
- Complaints Committee  
† Real Estate Board  
Virginia Racing Commission

#### September 1

† Architects, Board for  
Environmental Quality, Department of  
- Technical Advisory Committee  
† Game and Inland Fisheries, Board of  
† HIV Prevention Community Planning Committee, Virginia  
Labor and Industry, Department of  
- Virginia Apprenticeship Council  
† Waterworks and Wastewater Works Operators, Board for

#### September 6

# Calendar of Events

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Agriculture and Consumer Services, Department of  
- Virginia Marine Products Board  
† Game and Inland Fisheries, Board of  
Hopewell Industrial Safety Council

## September 7

Alcoholic Beverage Control Board  
† Conservation and Recreation, Department of  
- Virginia State Parks Foundation  
† Game and Inland Fisheries, Board of  
Motor Vehicle Dealers' Advisory Board

## September 8

† Game and Inland Fisheries, Board of  
† Health, State Board of  
† Housing Development Authority, Virginia  
† Professional Engineers, Board for  
† William and Mary, College of  
- Board of Visitors  
† Youth and Family Services, Board of

## September 9

† Health, State Board of  
Medicine, Board of  
- Legislative Committee  
- Advisory Board on Physician's Assistants  
† William and Mary, College of  
- Board of Visitors

## September 12

Hearing Aid Specialists, Board for

## September 13

† Accountancy, Board for  
Emergency Planning Committee, Local - County of  
Montgomery/Town of Blacksburg  
† Intercommunity Transition Council, Virginia  
† Resources Authority, Virginia

## September 14

Environmental Quality, Department of  
- Work Group on Detection/Quantitation Levels  
Higher Education in Virginia, Commission on the  
Future of  
† Emergency Planning Committee, Local - City of  
Alexandria

## September 15

† Chesapeake Bay Local Assistance Board  
† Landscape Architects, Board for  
† Professional Counselors, Board of  
- Advisory Board on Rehabilitation Providers  
† Psychology, Board of  
- Advisory Committee on Certified Practices

## September 16

† HIV Prevention Community Planning Committee,  
Virginia  
† Professional Counselors, Board of

## September 17

† Museum of Natural History, Virginia  
- Board of Trustees  
† Professional Counselors, Board of  
Visually Handicapped, Department for the  
- Vocational Rehabilitation Advisory Council

## September 19

Alcoholic Beverage Control Board  
† Cosmetology, Board for  
† Nursing, Board of

## September 20

† Auctioneers Board  
† Nursing, Board of  
† Polygraph Examiners Advisory Board, Virginia  
Real Estate Appraiser Board  
Land Use Advisory Council, State

## September 21

Asbestos Licensing Board, Virginia  
Contractors, Board for  
Local Debt, State Council on  
† Nursing, Board of  
† Reforestation of Timberlands Board  
Sewage Handling and Disposal Appeals Review Board  
Treasury Board

## September 22

† Accountancy, Board for  
† Dentistry, Board of  
HJR No. 76 Internet Staff Study Team  
† Medical Assistance Services, Department of  
- Drug Utilization Review Board  
† Nursing, Board of

## September 23

† Dentistry, Board of  
Rehabilitation Advisory Council, State

## September 26

Cosmetology, Board for

## September 27

† Professional and Occupational Regulation, Board of

## September 28

† Agriculture and Consumer Services, Board of  
Chesapeake Bay Local Assistance Board  
- Southern Area Review Committee  
Compensation Board  
† Contractors, Board for  
† Land Surveyors, Virginia Board for  
Virginia Code Commission  
- Title 15.1 Recodification Task Force

## September 29

† Architects, Professional Engineers, Land Surveyors  
and Landscape Architects, Board for

## October 11

† Resources Authority, Virginia

# Calendar of Events

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**October 20**

Virginia Code Commission  
- Title 15.1 Recodification Task Force

**October 25**

† Health Services Cost Review Council, Virginia

**October 27**

† Voluntary Formulary Board, Virginia

## PUBLIC HEARINGS

**August 25**

† Air Pollution Control Board, State

**August 30**

Waste Management Board, Virginia

**September 7**

Waste Management Board, Virginia

**September 8**

Waste Management Board, Virginia

**September 9**

† Mental Health, Mental Retardation and Substance Abuse Services, Department of

**September 12**

Hearing Aid Specialists, Board for  
Voluntary Formulary Board, Virginia

**September 20**

Auctioneers Board

**September 27**

† Professional and Occupational Regulation, Board of

**September 29**

Education, Department of

**October 5**

Criminal Justice Services, Department of

**October 11**

† Child Day Care Council

**October 13**

† Child Day-Care Council

**October 17**

† Child Day-Care Council

**October 19**

† Child Day-Care Council