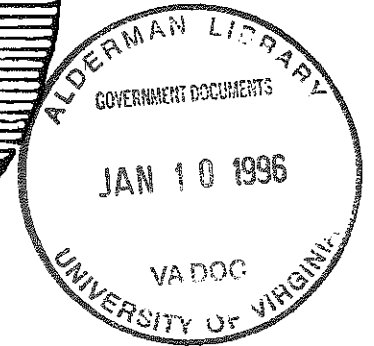
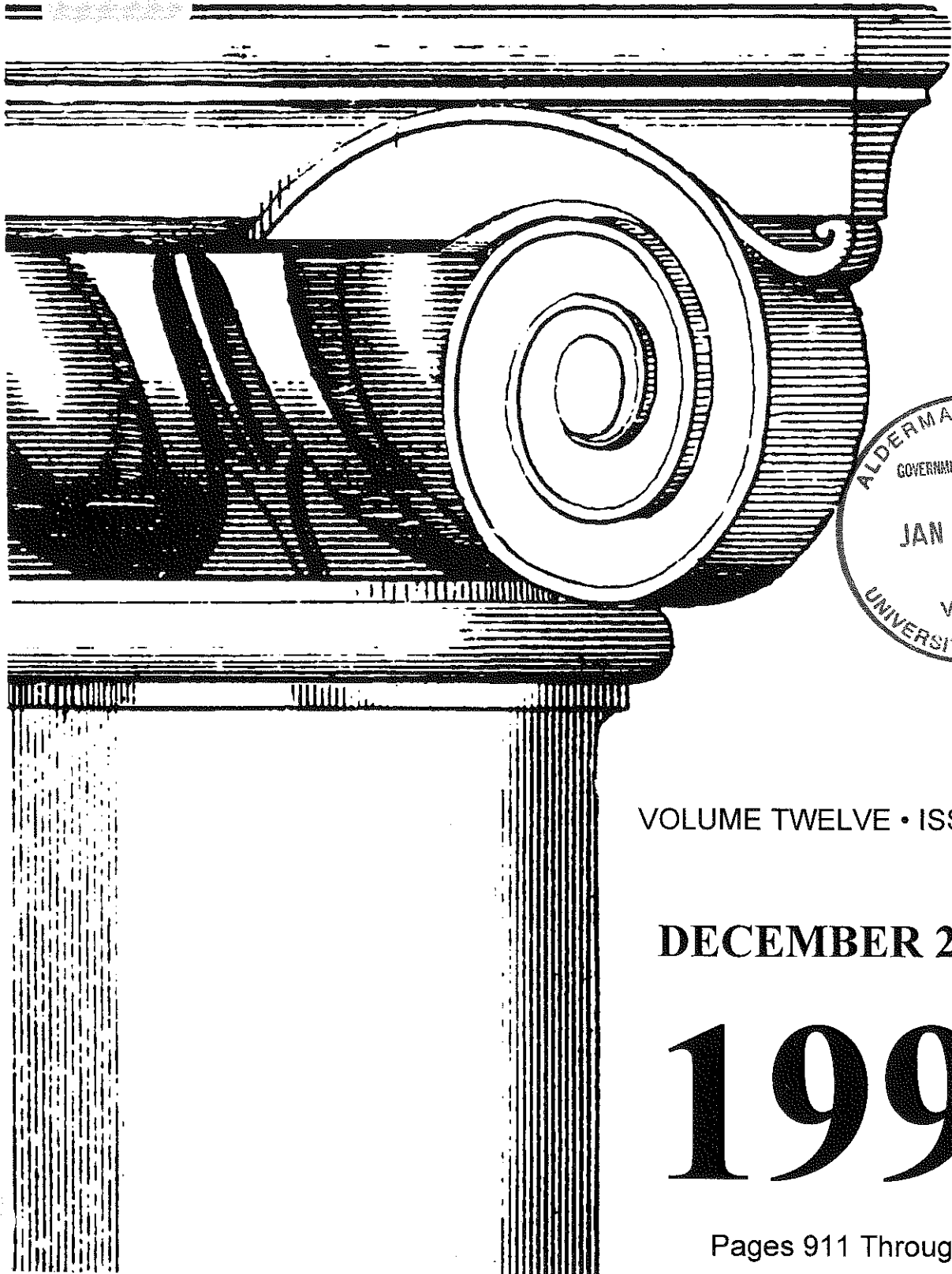


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THE VIRGINIA REGISTER

OF REGULATIONS

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DECEMBER 25, 1995

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THE VIRGINIA REGISTER INFORMATION PAGE

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, is 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 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 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-month 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 (§ 9-6.14:7.1 et seq.) of Chapter 1.1:1 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

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Symbol Key

† Indicates entries since last publication of the *Virginia Register*

STATE AIR POLLUTION CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Air Pollution Control Board intends to consider amending regulations entitled: **VR 120-01. Regulations for the Control and Abatement of Air Pollution, specifically operating permits and permit fees.** The purpose of the proposed action is to bring the regulations into compliance with Title V of the federal Clean Air Act (42 U.S.C. §§ 7661-7661f) and with federal regulations concerning state operating permit programs (40 CFR 70).

Public hearing plans: After publication in the Virginia Register of Regulations, the department will hold at least one public hearing to provide opportunity for public comment on any regulation amendments drafted pursuant to this notice.

Need: On November 12, 1993, the Commonwealth of Virginia submitted to the U.S. Environmental Protection Agency (EPA) the various elements of an operating permit program to meet the requirements of Title V of the new Clean Air Act. The program was based upon emergency operating permit and fee program regulations adopted by the State Air Pollution Control Board at its June 1993 meeting.

On December 5, 1994 (59 FR 62324), EPA disapproved the operating permit program submitted by the Commonwealth on November 12, 1993. This disapproval constitutes disapproval under § 502(d) of the Clean Air Act (CAA). As provided under § 502(d)(1) of the CAA, the Commonwealth has up to 180 days (July 5, 1996) from the date of EPA's notification of final disapproval for the Governor of Virginia to revise and resubmit the program. EPA disapproved the program on the basis that Virginia has not met the following requirements:

1. Pursuant to § 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x) and 70.7(h), adequate provisions for public participation in the permit process, including statutory authority that meets the minimum threshold for judicial standing.
2. Pursuant to § 505(b)(3) of the CAA and 40 CFR 70.8(e), authority to prevent default issuance of permits.
3. Regulations that are permanent (emergency regulations expired on June 28, 1994).
4. Authority to issue permits to the proper universe of sources required by 40 CFR 70.
5. Regulations that meet the requirements of 40 CFR 70 ensuring issuance of permits that contain all applicable federal requirements and correctly delineate provisions only enforceable by the Commonwealth.

In addition to the above, EPA indicates in the notice that a number of other deficiencies (mostly regulatory) that are

explained in the Technical Support Document need to be corrected.

On January 9, 1995, the Commonwealth submitted revised regulations, adopted by the board on December 16, 1994, to correct the deficiencies noted in items 3, 4 and 5 above and those noted in the Technical Support Document. On that same day, the Commonwealth filed suit in federal court disputing the legal basis of item 1 above. On May 17, 1995, the Commonwealth submitted revised code provisions to correct the deficiency noted in item 2 above.

On September 19, 1995 (60 FR 48435), EPA once again proposed disapproval of the operating permit program. This includes disapproval of the regulation corrections submitted on January 9, 1995, and reaffirmation of disapproval of the original program submittal. If promulgated, this disapproval will constitute a disapproval under § 502(d) of the Clean Air Act (CAA). As provided under § 502(d)(1) of the CAA, the Commonwealth will have up to 180 days from the date of EPA's notification of final disapproval for the Governor of Virginia to revise and resubmit the program. EPA is proposing to disapprove this program on the grounds that it does not substantially meet the requirements of the CAA and of the implementing regulations at 40 CFR 70. EPA's primary objections to Virginia's program are as follows:

1. As required by § 502(b)(6) of the CAA and 40 CFR 70.4(b)(3)(x), the program does not adequately afford persons the opportunity to seek judicial review of final permit decisions.
2. As required by § 502(b)(5) of the CAA and 40 CFR 70.3, the program does not assure that all sources required by the CAA to obtain Title V permits will be required to obtain such permits.
3. As required by § 502(b)(3) of the CAA and 40 CFR 70.9, the program does not contain an adequate provision for collection of Title V program fees.

In addition to the above, EPA indicates in the notice that a number of other deficiencies (mostly regulatory) that are explained in the Technical Support Document need to be corrected.

On October 16, 1995, the State Air Pollution Control Board approved an emergency regulation revision correcting the deficiencies noted by EPA. This revision was submitted to EPA on November 8, 1995. The emergency revision, however, has a life of only one year from the effective date of October 20, 1995. Upon the expiration of that year, it must be replaced by a permanent regulation revision developed through the Administrative Process Act procedures.

EPA concludes that it must disapprove Virginia's program and cannot merely grant it interim approval because the deficiencies are so significant that they prevent the entire program from substantially meeting the requirements of 40 CFR 70. EPA will not approve Virginia's operating permit program until the state amends § 10.1-1318 B of the Code of

Notices of Intended Regulatory Action

Virginia as well as the applicable provisions of Rules 8-5 and 8-6 in Regulations for the Control and Abatement of Air Pollution.

If Virginia's program does not have interim approval status by November 15, 1995, EPA must promulgate, administer, and enforce a federal permit program for Virginia on that date. In addition, if EPA finalizes its proposed disapproval, Virginia may become subject to sanctions under the CAA. The possible sanctions include the cessation of certain federal highway funding and a requirement that new or modified major sources achieve an emissions reduction-to-increases ratio of at least 2:1. EPA may apply the sanctions at any time after the final disapproval notice; however, EPA must apply one of these sanctions 18 months following the date of a final disapproval unless Virginia has submitted a revised program and EPA has determined that it corrects the noted deficiencies. A second sanction will apply 6 months after the first if the deficiencies have not been corrected. EPA will be required to apply sanctions against Virginia on July 5, 1996, unless by that date all deficiencies noted in the first disapproval have been corrected. Thus, to ensure that the sanctions are not imposed for regulatory deficiencies, new regulatory corrections need to be submitted by July 5, 1996. The emergency regulation revision temporarily meets this need.

The regulation revision is necessary because a failure to promulgate it will pose an imminent threat to public safety and possibly to public health because of the severe highway funds sanction that the federal government will impose in the Northern Virginia, Richmond, and Hampton Roads ozone nonattainment areas if the Commonwealth fails to correct the noted regulatory provisions before the sanction is implemented. Furthermore, if Virginia fails to submit a federally approvable program, EPA will assume responsibility for administering the program within Virginia, thus depriving the state of decision-making power as well as fee revenue to the disadvantage of Virginia's government, the regulated community, and the public.

Title V of the Act provides a mechanism to implement the various requirements under the other titles in the Act through the issuance of operating permits. Under this title, the EPA is required to develop regulations with specific operating permit requirements. The states are required, in turn, to develop operating permit programs that meet the requirements specified in EPA's regulations.

The operating permits issued under this program will enhance the ability of EPA, the states, and citizens to enforce the requirements of the Act; clarify for the permitted sources exactly which air quality requirements apply; and also aid in implementing the Act by providing states with permit fees to support their programs.

A permit sets out for both the department and the owner the regulatory requirements appropriate to that source's operation. The benefits are that the operator or owner knows what requirements must be fulfilled and the department has an agreement with the owner through the permit that these requirements will be carried out. The permit enables the department to more efficiently and effectively carry out its source surveillance activities while providing a clear mandate for each source on what its responsibility entails. An operating permit inclusive of all requirements pertaining to the source ensures that the owner of the source is fully informed of all

applicable state and federal regulations. The operating permit program provides that both the department and the owner conduct a periodic review of polluting activities to ensure that effective emission reductions are taking place.

An operating permit provides the mechanism for the department to assess any facility's compliance with the air quality standards and regulations that provide a basis to protect human health and the environment. The permit provides a direct enforcement mechanism for the department to determine a facility's compliance whereas the enforcement of the standards and regulations without the permit is more difficult because specific conditions for the individual facility have not been derived from those standards and regulations.

The public participation requirements of the operating permit program provide an opportunity for citizens to review and to provide comments about the compliance performance of facilities emitting air pollutants along with the department.

Alternatives: Alternatives to the proposed regulation amendments being considered by the department are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being considered because it meets the stated purpose of the regulation amendments: to bring the regulations into compliance with federal law and regulation.
2. Make alternative regulatory changes to those required by the provisions of the law and associated regulations and policies. This option is not being considered because it does not necessarily meet the stated purpose of the regulation. Further, alternative regulatory changes could also go beyond the stated purpose by imposing requirements that may not be consistent with federal statutory and regulatory requirements.
3. Take no action to amend the regulations. This option is not being considered because it would not accomplish the goals of federal and state statutory and regulatory requirements or the stated purpose of the regulation. Furthermore, not taking any action would lead to federal sanctions, possible including the removal of federal highway funds and the imposition of a federal operating permit program on Virginia in which the permit fee revenues would go to the federal government rather than to Virginia.

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

Applicable statutory requirements: The 1990 amendments create a major change to the approach taken by the U.S. Congress in previous promulgations of the Clean Air Act (the Act or CAA). Title V of the Act requires the states to develop operating permit programs to cover all stationary sources defined as major by the Act. Permits issued under these programs must set out standards and conditions that cover all the applicable requirements of the Act for each emission unit at each individual stationary source. The federal regulations required to be developed under Title V, 40 CFR 70 (57 FR 32250, July 21, 1992), specify the minimum elements that must be included in state operating permit programs.

Notices of Intended Regulatory Action

CAA, § 502(a) and 40 CFR 70.3(a) require that the following sources be covered under the provisions of any Title V program:

1. Affected sources as defined under the acid deposition provisions of Title IV of the Act.
2. Major sources, defined as follows:
 - a. Any source of air pollutants with the potential to emit 100 tons per year (tpy) or more of any pollutant;
 - b. In ozone nonattainment areas designated as serious, any source emitting 50 tpy or more of VOCs or NO_x (in Virginia, the Northern Virginia area is designated serious); for severe or extreme nonattainment areas, sources emitting 25 and 10 tpy or more of VOCs or NO_x, respectively; and
 - c. Any source with the potential to emit 10 tpy of any hazardous air pollutant or 25 tpy of any combination of hazardous air pollutants regulated under § 112 of the Act.
3. Any other source, including an area source, subject to a hazardous air pollutant standard under § 112 of the Act.
4. Any source subject to new source performance standards under § 111 of the Act.
5. Any source required to have a preconstruction review permit pursuant to the requirements of the prevention of significant deterioration program under Title I, Part C of the Act or the nonattainment area new source review program under Title I, Part D of the Act.
6. Any other stationary source in a category that EPA designates in whole or in part by regulation, after notice and comment.

CAA, § 502(b) and 40 CFR 70.4(b) and other provisions of 40 CFR 70, as noted, set out the minimum elements that must be included in each program, as follows:

1. Requirements for permit applications, including standard application forms, compliance plans and criteria for determining the completeness of applications. (40 CFR 70.5)
2. Monitoring and reporting requirements. (40 CFR 70.6(a)(3))
3. A permit fee system. (40 CFR 70.9)
4. Provisions for adequate personnel and funding to administer the program.
5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act. (40 CFR 70.7(a)(1))
6. Authority to issue permits for a fixed term, not to exceed five years. (40 CFR 70.6(a)(2))
7. Authority to assure that permits incorporate emission limitations in an applicable implementation plan. (40 CFR 70.6(a)(1))

8. Authority to terminate, modify, or revoke and reissue permits for cause and a requirement to reopen permits in certain circumstances. (40 CFR 70.7)

9. Authority to enforce permits, permit fees, and the requirement to obtain a permit, including civil penalty authority in a maximum amount of not less than \$10,000 per day, and appropriate criminal penalties. (40 CFR 70.11)

10. Authority to assure that no permit will be issued if EPA objects to its issuance in a timely fashion. (40 CFR 70.8(c) and (e))

11. Procedures for (i) expeditiously determining when applications are complete, (ii) processing applications, (iii) public notice, including offering an opportunity for public comment, and a hearing on applications, (iv) expeditious review of permit actions, and (v) state court review of the final permit action. (40 CFR 70.5 (a)(2) and 70.7 (h))

12. Authority and procedures to provide that the permitting authority's failure to act on a permit or renewal application within the deadlines specified in the Act shall be treated as a final permit action solely to allow judicial review by the applicant or anyone also who participated in the public comment process to compel action on the application.

13. Authority and procedures to make available to the public any permit application, compliance plan, permit emissions or monitoring report, and compliance report or certification, subject to the confidentiality provisions of § 114(c) of the Act; the contents of the permit itself are not entitled to confidentiality protection.

14. Provisions to allow operational flexibility at the permitted facility.

CAA, § 503(b) and 40 CFR 70.5(c)(8) and (9) require that applicants shall submit with the permit application a compliance plan describing how the source will comply with all applicable requirements of the Act. The compliance plan must include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every six months. The permittee must also certify that the facility is in compliance with any applicable requirements of the permit no less frequently than annually. The permittee must also promptly report any deviations from permit requirements to the permitting authority.

CAA, § 503(d) and 40 CFR 70.7(b) specify that a source's failure to have an operating permit shall not be a violation of the Act if the source owner submitted a timely and complete application for a permit and if he submitted other information required or requested to process the application in a timely fashion.

CAA, § 503(e) and 40 CFR 70.4(b)(3)(viii) require that a copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. Any information that is required of an applicant to submit and which is entitled to protection

Notices of Intended Regulatory Action

from disclosure under § 114 (c) of the Act can be submitted separately.

CAA, § 504 and 40 CFR 70.6(a)-(c) specify what is to be included in each operating permit issued under this program. These provisions require each permit to include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every six months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements, including the requirements of any state implementation plan.

CAA, § 504(b) indicates that the EPA administrator may prescribe, by rule, procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated by the Act. Continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance.

CAA, § 504(c) and 40 CFR 70.6(a)(3) require that each permit issued under the program shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to applicable regulations issued under § 504(b) and to any other requirements specified in federal regulation. Any report required to be submitted by a permit issued to a corporation shall be signed by a responsible corporate official, who shall certify its accuracy.

CAA, § 504(d) and 40 CFR 70.6(d) allow the state permitting authority to issue a general permit covering numerous similar sources after notice and opportunity for public hearing. Any general permit shall comply with all program requirements. Any source governed by a general permit regulation must still file an application under this program.

CAA, § 504(e) and 40 CFR 70.6(e) allow the state permitting authority to issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of the Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under the Act. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location.

CAA, § 504(f) and 40 CFR 70.6(f) provide a permit shield for permittees. This section specifies that compliance with a permit issued in accordance with Title V shall be deemed in compliance with CAA, § 502, or with the program. And unless otherwise provided by the EPA administrator and by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act that relate to the permittee, if:

1. The permit includes the applicable requirements of those provisions, or
2. The permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and

the permit includes the determination or a concise summary thereof.

CAA, § 503(c) and 40 CFR 70.5(a)(1) specify that all sources required to be permitted under a Title V program are required to submit an application within twelve months after the date EPA approves the state's program. The state permitting authority may specify an earlier date for submitting applications. The state permitting authority must establish a phased schedule for acting on permit applications submitted within the first full year after program approval, and must act on at least one-third of the permits each year over a period not to exceed three years after approval of the program. After acting on the initial application, the permitting authority must issue or deny a complete application within 18 months after receiving that application.

CAA, § 505(a) and 40 CFR 70.8(a) require the state permitting authority to send EPA a copy of each permit application and each permit proposed to be issued. For each permit application or proposed permit sent to EPA, CAA, § 505(a) and 40 CFR 70.8(b) also require the permitting authority to notify all states whose air quality may be affected and that are contiguous to the state in which the emission originates, or that are within 50 miles of the source. This notice must provide an opportunity for these affected states to submit written recommendations respecting the issuance of the permit and its terms and conditions. CAA, § 505(b) and 40 CFR 70.8(c) provide for EPA objections to any permit which contains provisions that are not in compliance with the requirements of the Act or with the applicable State Implementation Plan. This section also provides that any person may petition the EPA administrator within 60 days after the expiration of the 45-day review period, if no objections were submitted by the EPA administrator. Furthermore the state permitting authority may not issue the permit if the EPA administrator objects to its issuance unless the permit is revised to meet the objection. If the state permitting authority fails to revise and resubmit the permit, EPA must issue or deny the permit in accordance with the requirements of Title V. Under § 505(d) and 40 CFR 70.8(a)(2), the permit program submitted by the state may not have to meet these requirements for sources other than major sources covered by the program. CAA, § 505(e) and 40 CFR 70.7(g) allow the EPA administrator to terminate, modify, or revoke and reissue an operating permit issued under a state's program, if he finds that cause exists for such action.

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

Public comments may be submitted until 4:30 p.m. on January 11, 1996, to the Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240.

Contact: Dr. Kathleen Sands, Policy Analyst, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4413, FAX (804) 762-4510 or (804) 762-4021/TDD ☎

VA.R. Doc. No. R96-123; Filed November 21, 1995, 4:46 p.m.

Notices of Intended Regulatory Action

DEPARTMENT OF EDUCATION (STATE BOARD OF)

Notice of Intended Regulatory Action

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 consider amending regulations entitled: **VR 270-01-0036 [8 VAC 20-370-10 et seq.] Regulations Governing Fees and Charges.** The purpose of the proposed action is to allow local school boards to charge a fee for students to take an optional summer administration of the Literacy Passport Test. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 22.1-6 of the Code of Virginia.

Public comments may be submitted until January 12, 1996.

Contact: Kathryn S. Kitchen, Division Chief, Department of Education, James Monroe Bldg., P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2025, FAX (804) 225-2053 or (804) 225-2300, toll-free 1-800-292-3820, or (804) 786-8389/TDD ☎

VA.R. Doc. No. R96-121; Filed November 21, 1995, 11:36 a.m.

BOARD OF HEALTH PROFESSIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Health Professions intends to consider promulgating regulations entitled: **VR 365-01-3 [18 VAC 75-30-10 et seq.] Regulations Governing Standards for Dietitians and Nutritionists.** The purpose of the proposed action is to establish minimum requisite education, training, and experience appropriate for a person to hold himself out to be, or advertise or allow himself to be advertised as, a dietitian or nutritionist. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400, 54.1-2503 and 54.1-2731 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Robert A. Nebiker, Executive Director, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9919, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† Notice of Intended Regulatory Action

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 consider amending regulations entitled: **VR 380-02-01 [8 VAC 40-30-10 et seq.] Regulations**

Governing the Approval of Certain Institutions to Confer Degrees, Diplomas and Certificates. The purpose of the proposed action is to address inefficiencies contained in current regulations, update regulations to reflect changing technologies, and address a gap in the state's quality assurance measures. The agency does not intend to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 23-265 of the Code of Virginia.

Public comments may be submitted until January 26, 1996, to Elizabeth Griffin, State Council of Higher Education for Virginia, Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219.

Contact: Fran Bradford, Regulatory Coordinator, State Council of Higher Education for Virginia, Monroe Building, 101 North 14th Street, 9th Floor, Richmond, VA 23219, telephone (804) 225-2613.

VA.R. Doc. No. R96-134; Filed December 5, 1995, 12:44 p.m.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-2 [13 VAC 5-20-10 et seq.] Virginia Certification Standards.** The purpose of the proposed action is to amend the regulation by deleting unnecessary text and making the regulation more easily understandable. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 27-97, 36-98.3, and 36-137(6) of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-94; Filed November 8, 1995, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-6 [13 VAC 5-50-10 et seq.] Virginia Statewide Fire Prevention Code/1993.** The purpose of the proposed action is to amend the regulation regarding blasting, qualifications of fire officials, Virginia public building regulations and liquefied petroleum gas. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 27-97 and 36-137(6) of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-92; Filed November 8, 1995, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-21 [13 VAC 5-60-10 et seq.] Virginia Uniform Statewide Building Code - Volume I - New Construction Code/1993**. The purpose of the proposed action is to amend the regulation regarding swimming pools and storage magazines. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-98 of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-93; Filed November 8, 1995, 9:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending regulations entitled: **VR 394-01-22 [13 VAC 5-70-10 et seq.] Virginia Uniform Statewide Building Code - Volume II - Building Maintenance Code/1993**. The purpose of the proposed action is to establish standards for automatic sprinkler systems in hospitals regardless of when such facilities were constructed. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 36-99.9:1 of the Code of Virginia.

Public comments may be submitted until December 29, 1995.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 North Second St., Richmond, VA 23219-1321, telephone (804) 371-7170 or FAX (804) 371-7092.

VA.R. Doc. No. R96-91; Filed November 6, 1995, 2:15 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

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 consider amending regulations entitled:

VR 460-03-3.1100 [12 VAC 30-50-100 through 12 VAC 30-50-310] Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A and B) and VR 460-02-4.1920 [12 VAC 30-80-10 et seq.] Methods and Standards for Establishing Payment Rates -- Other Types of Care (Attachment 4.19-B). The purpose of the proposed action is to implement savings to the Medicaid Program by covering the less expensive over-the-counter alternative medications as therapeutic alternatives to more expensive legend drugs. The agency does not intend to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995, to David Shepherd, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria P. Simmons or Roberta J. Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850 or FAX (804) 371-4981.

VA.R. Doc. No. R96-81; Filed October 31, 1995, 3:53 p.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider repealing regulations entitled: **VR 465-10-01 [18 VAC 85-100-10 et seq.] Regulations Governing the Practice of Radiologic Technologists**. The purpose of the proposed action is to repeal current regulations for the certification of radiologic technologists to replace with regulations for licensure by January 1, 1997, in accordance with statutory mandate. The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-84; Filed November 2, 1995, 12:53 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Medicine intends to consider promulgating regulations entitled: **VR 465-10-01:1 [18 VAC 85-101-10 et seq.] Regulations Governing the Practice of Radiologic Technologists**. The purpose of the proposed action is to establish requirements for licensure to practice as a radiologic technologist by January 1, 1997, in accordance with statutory mandate. The agency intends to

Notices of Intended Regulatory Action

hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.8:1 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-85; Filed November 2, 1995, 12:53 p.m.

STATE MILK COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Milk Commission intends to consider amending regulations entitled: **VR 475-02-01 [2 VAC 15-10-10 et seq.] Public Participation Guidelines.** The purpose of the proposed action is to amend regulations to comply with style, form and format recommended by the Registrar of Regulations to provide consistency and uniformity, in general, with public participation guidelines utilized by other state agencies. This action is consistent with the regulatory analysis performed pursuant to Executive Order 15(94). The commission has formed an ad-hoc advisory committee to draft amendments to the regulations. The committee desires to solicit public comment, oral and written, to assist in drafting amendments. The committee will welcome oral comments at its first scheduled meeting on January 17, 1996. Further, information concerning the time and location of the meeting may be obtained from Edward C. Wilson, Jr. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Public comments may be submitted until January 15, 1996.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013 or FAX (804) 786-3779.

VA.R. Doc. No. R96-78; Filed October 26, 1995, 1:26 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Milk Commission intends to consider amending regulations entitled: **VR 475-02-02 [2 VAC 15-20-10 et seq.] Rules and Regulations for the Control, Regulation and Supervision of the Milk Industry in Virginia.** The purpose of the proposed action is to amend §§ 1, 2, 3, 5, 6, 9, 10, 11, 12 and 13 of VR 475-02-02 to achieve regulatory control in the least intrusive manner, providing for the protection of the safety and welfare of Virginians as mandated by law, and for the efficient administration of the regulations. This action is consistent with the regulatory analysis performed pursuant to Executive

Order 15(94). The commission has formed an ad-hoc advisory committee to draft amendments to the regulations. The committee will welcome oral comments at its first scheduled meeting on January 17, 1996. Further, information concerning the time and location of the meeting may be obtained from Edward C. Wilson, Jr. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 3.1-430 of the Code of Virginia.

Public comments may be submitted until January 15, 1996.

Contact: Edward C. Wilson, Jr., Deputy Administrator, State Milk Commission, 200 N. 9th St., Suite 1015, Richmond, VA 23219-3414, telephone (804) 786-2013 or FAX (804) 786-3779.

VA.R. Doc. No. R96-79; Filed October 26, 1995, 1:26 p.m.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **VR 560-01-02 [18 VAC 115-20-10 et seq.] Regulations Governing the Practice of Professional Counselors.** The purpose of the proposed action is to consider a reduction in some of its fees in compliance with statutory mandate. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-86; Filed November 2, 1995, 12:53 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **VR 560-01-03 [18 VAC 115-30-10 et seq.] Regulations Governing the Certification of Substance Abuse Counselors.** The purpose of the proposed action is to consider a reduction in some of its fees in compliance with statutory mandate. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Notices of Intended Regulatory Action

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-111; Filed November 14, 1995, 3:54 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider amending regulations entitled: **VR 560-01-04 [18 VAC 115-40-10 et seq.] Regulations Governing the Practice of Rehabilitation Providers.** The purpose of the proposed action is to establish educational criteria and standards for the licensure of rehabilitation providers as required by the 1994 Acts of the Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-82; Filed November 2, 1995, 12:53 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Professional Counselors and Marriage and Family Therapists intends to consider promulgating regulations entitled: **VR 560-01-05 [18 VAC 115-50-10 et seq.] Regulations Governing the Licensure of Marriage and Family Therapists.** The purpose of the proposed action is to establish regulations for licensure of marriage and family therapists in compliance with statutory mandate. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-87; Filed November 2, 1995, 12:53 p.m.

BOARD OF SOCIAL WORK

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Social Work intends to consider amending regulations entitled: **VR 620-01-2 [18 VAC 140-20-10 et seq.] Regulations Governing the Practice of Social Work.** The purpose of the proposed action is to consider a reduction in fees in order to maintain revenues consistent with expenditures. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-113 and 54.1-2400 of the Code of Virginia.

Public comments may be submitted until December 27, 1995.

Contact: Evelyn Brown, Executive Director, Board of Social Work, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9912, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-89; Filed November 2, 1995, 12:53 p.m.

DEPARTMENT OF TAXATION

† Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to consider promulgating regulations entitled: **VR 630-10-9.1. Retail Sales and Use Tax: Audiovisual Tape and Film Production.** The purpose of the proposed regulation is to explain the department's policy regarding the exemption for tapes and other audiovisual works for broadcasting or commercial exhibition generally, and for the production, transfers of tangible property, and equipment and parts used in the production of such audiovisual works. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 58.1-203 of the Code of Virginia.

Public comments may be submitted until February 1, 1996.

Contact: W. Bland Sutton, III, Tax Policy Analyst, Department of Taxation, Office of Tax Policy, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-6358 or FAX (804) 367-0045.

VA.R. Doc. No. R96-127; Filed December 5, 1995, 3:02 p.m.

BOARD OF VETERINARY MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled: **VR 645-01-1 [18 VAC 150-20-10 et seq.] Regulations Governing**

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the Practice of Veterinary Medicine. The purpose of the proposed action is to establish requirements for continuing education for licensure renewal as mandated by Acts of the 1995 General Assembly. The agency intends to hold a public hearing on the proposed regulation after publication.

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

Public comments may be submitted until December 27, 1995.

Contact: Elizabeth Carter, Executive Director, Board of Veterinary Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

VA.R. Doc. No. R96-88; Filed November 2, 1995, 12:54 p.m.

VIRGINIA RACING COMMISSION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Racing Commission intends to consider promulgating regulations entitled: **11 VAC 10-180-10 et seq. Medication.** The purpose of the proposed action is to prescribe the circumstances and procedures under which furosemide and phenylbutazone may be administered to racehorses and the circumstances and procedures under which all other medications will be prohibited. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 59.1-369 of the Code of Virginia.

Public comments may be submitted until January 16, 1996.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23208, telephone (804) 371-7363.

VA.R. Doc. No. R96-120; Filed November 21, 1995, 8:54 a.m.

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-14-07 [9 VAC 25-90-10 et seq.] Oil Discharge Contingency Plans and Administrative Fees for Approval.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into new regulations (VR 680-14-07:1, Facility and Aboveground Storage Tank Requirements, and VR 680-14-08:1, Tank Vessel Requirements). (See notice regarding VR 680-14-07:1 [9 VAC 25-95-10 et seq.] and VR 680-14-08:1 [9 VAC 25-105-10 et seq.]). The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-100; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-07:1 [9 VAC 25-95-10 et seq.] Facility and Aboveground Storage Tank Requirements.** The purpose of the proposed action is to adopt a new regulation which combines the necessary requirements for facilities and aboveground storage tanks into a single regulation in order to provide a clearly written and understandable regulation that can be implemented more efficiently. Combining VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13 will aid DEQ's efforts to streamline government services, provide uniformity in regulation, eliminate duplication and increase performance and efficiency. The action is also necessary (i) to consider providing operators with a coordinated federal/state approach by acceptance of the federally approved response plans and (ii) to provide regulatory relief and variance options to those facilities and oil products addressed in the 1994 amendments to state law.

Need: The regulations protect the health and safety of the citizens within the Commonwealth and the protection of the environment. This regulatory action is necessary to coordinate the implementation of these regulations and to eliminate confusion as to applicability of each regulation. For instance, definitions found in § 62.1-44.34:14 were added and modified as additional legislation was developed thereby causing definitions to be fragmented among the regulations.

Combining the four regulations into two will provide more clearly written and understandable regulations that can be implemented more efficiently. The recent promulgation of final federal tank vessel and facility regulations by the U.S. Coast Guard (USCG) and Environmental Protection Agency (EPA) allows the DEQ to develop a coordinated approach for planning and emergency response efforts within state waters.

Subject Matter and Intent: Currently four regulations (VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13) apply to facilities located in the Commonwealth that have an aboveground storage capacity of 25,000 gallons or more of oil and tank vessels. Each regulation was developed as a result of separate statutory changes and with each statutory amendment, the definitions of Article 11 (§ 62.1-44.34:14 et seq.) were modified. For example, a facility may be subject to the Oil Discharge Contingency Plan (ODCP) regulations and not subject to the pollution prevention requirements. Inconsistencies between the regulations can be eliminated by this proposal, resulting in a more efficient and understandable regulation for preventing or responding to a discharge of oil.

In addition, the DEQ has reviewed final tank vessel and facility response plan regulations implementing the provisions

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of the federal Oil Pollution Act of 1990 and found them to be compatible with the ODCP requirements of VR 680-14-07. The EPA facility regulations will not be applicable to the vast majority of facilities subject to the DEQ ODCP regulations. To better facilitate the one plan concept, DEQ will evaluate and take the necessary steps to accept USCG and EPA approved response plans either wholly or with state specific information added. Reevaluation of the administrative fee for approval will also be undertaken.

Section 62.1-44.34:15.1 of the State Water Control Law was amended to exempt certain ASTs located at facilities not engaged in the resale of oil from inventory control and testing for significant inventory variations requirements. Section 62.1-44.34:15.1.5 was added to enable the board to establish criteria for granting variances from the AST Pollution Prevention Requirements (VR 680-14-13) for facilities not engaged in the resale of oil.

In addition, § 62.1-44.34:17 was amended to provide that facilities not engaged in the resale of oil shall not be subject to § 62.1-44.34:15.1 until July 1, 1995 (changed until variance requirements are promulgated) and ASTs with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored be exempt from any requirements of § 62.1-44.34:15.1. In addition, the amendment provides that the definition of oil, for the purposes of §§ 62.1-44.34:15.1 and 62.1-44.34:16 and for any requirement under § 62.1-44.34:15 to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies, does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure.

Estimated Impacts: All impacts associated with this intended regulatory action are expected to be beneficial to the regulated community as well as the DEQ. Consolidation of regulations within the AST program will enable the public, industry and the DEQ to better understand the impact of the regulations and to provide for options to be considered. Providing a coordinated spill response with the USCG and the EPA by accepting federally approved spill plans will demonstrate Virginia's concern for protecting the environment and eliminate duplication of regulatory requirements. The DEQ will require specific information to be submitted with the addition to demonstration of federal approvals. It is estimated that 450 AST facilities with approximately 2,500 ASTs will each save \$550 per year by not having to perform the inventory control or testing for variance requirements. Estimates are that the ability to grant variances will save approximately 100 facilities approximately \$1,000 per year. The extension of compliance is projected to affect 450 AST facilities with approximately 2,500 ASTs and will save each facility \$500 for the year extension. Exemption from pollution prevention requirements for heating oil ASTs of 5,000 gallons or less will save 750 AST facilities approximately \$500 per year per facility. The asphalt exemption will save 20 facilities statewide approximately \$10,000 per facility initially and \$1,000 per facility annually.

Alternatives: An alternative is to retain, unchanged, the existing separate regulations. This is not considered to be an efficient alternative. The proposed amendment to combine

the four regulations into two is the least burdensome and intrusive alternative available.

Having to determine individual applicability of the regulations is counterproductive and not in the best interest of the DEQ or the regulated community. It is confusing at best and difficult for staff to coordinate compliance efforts. Additionally, having several response plans on a tank vessel or at a facility often leads to confusion of responsibility and therefore an ineffective response.

The 1994 statutory amendments to § 62.1-44.34:15.1 provided that facilities not engaged in the resale of oil should not be subject to VR 680-14-13 until July 1, 1995 (the new date is until variance provisions are promulgated); that specific ASTs located at these facilities should not be subject to inventory control; and, that these facility operators should be able to request variances to VR 680-14-13 based on established criteria. This requirement is mandated by statute and provides a beneficial extension of the compliance date as well as enables DEQ to evaluate evolving technologies for acceptance within the regulation.

Comments: The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on this intended regulatory action and on the costs and benefits of the stated alternatives as well as other alternatives. To be considered, comments should be directed to Mr. David Ormes, at the address below and should be received by 4 p.m. on Wednesday, January 17, 1996.

Public Meetings: Public meetings will be held on Monday, January 8, 1996, at 7 p.m. at the Virginia War Memorial Auditorium, 621 S. Belvidere Street, Richmond, and on Wednesday, January 10, 1996, at 7 p.m. in the Roanoke County Administration Center, 5204 Bernard Drive, Roanoke.

Accessibility to Persons with Disabilities: The meeting will be held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Mr. David Ormes, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, or by telephone at (804) 762-4263 (effective 12/1/95 - 698-4263) or TDD (804) 762-4021 (effective 12/1/95 - 698-4021). Persons needing interpreter services for the deaf must notify Mr. Ormes no later than Wednesday, December 27, 1995.

Advisory Committee/Group: All legal requirements related to public participation and all public participation guidelines will be strictly followed. An ad hoc advisory group will be convened to provide input to the department regarding the content of the proposed regulation and to ensure that the citizens have reasonable access and opportunity to present their comments and concerns. The ad hoc group may be composed of representatives from state, federal and local agencies; industry, manufacturers, facility and tank vessel owners/operators, environmental groups and the public. This group will meet at least twice during the regulation development.

The DEQ intends to hold at least one public hearing (informational proceeding) on the proposed regulation after it is published in the Register of Regulations. The public hearing will be convened by a member of the board. The DEQ does not intend to hold a formal hearing (evidentiary) on

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the proposed regulation after the proposal is published in the Register of Regulations.

Impact on Family Formation, Stability and Autonomy: DEQ will consider the impact of the regulatory actions on family formation, stability and autonomy during the formulation of proposals. However, it is not anticipated that these regulations will have a direct impact on families. There may be positive indirect impacts in that the proposals will result in regulatory efficiency, thus promoting job retention and economic growth.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-102; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-14-08 [9 VAC 25-100-10 et seq.] Tank Vessel Financial Responsibility Requirements and Administrative Fees for Approval.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation (VR 680-14-08:1, Tank Vessel Requirements). (See notice regarding VR 680-14-08:1 [9 VAC 25-105-10 et seq.]) The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-99; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider promulgating regulations entitled: **VR 680-14-08:1 [9 VAC 25-105-10 et seq.] Tank Vessel Requirements.** The purpose of the proposed action is to adopt a new regulation which combines the necessary requirements of two existing tank vessel regulations (part of VR 680-14-07 and VR 680-14-08) and to evaluate acceptance of federally approved oil spill response plans and financial responsibility requirements. Combining VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13 will aid

DEQ's efforts to streamline government services, provide uniformity in regulation, eliminate duplication and increase performance and efficiency. The action is also necessary (i) to consider providing operators with a coordinated federal/state approach by acceptance of the federally approved response plans and (ii) to provide regulatory relief and variance options to those facilities and oil products addressed in the 1994 amendments to state law.

Need: The regulations protect the health and safety of the citizens within the Commonwealth and the protection of the environment. This regulatory action is necessary to coordinate the implementation of these regulations and to eliminate confusion as to applicability of each regulation. For instance, definitions found in § 62.1-44.34:14 were added and modified as additional legislation was developed thereby causing definitions to be fragmented among the regulations.

Combining the four regulations into two will provide more clearly written and understandable regulations that can be implemented more efficiently. The recent promulgation of final federal tank vessel and facility regulations by the U.S. Coast Guard (USCG) and Environmental Protection Agency (EPA) allows the DEQ to develop a coordinated approach for planning and emergency response efforts within state waters.

Subject Matter and Intent: Currently four regulations (VR 680-14-07, VR 680-14-08, VR 680-14-12 and VR 680-14-13) apply to facilities located in the Commonwealth that have an aboveground storage capacity of 25,000 gallons or more of oil and tank vessels. Each regulation was developed as a result of separate statutory changes and with each statutory amendment, the definitions of Article 11 (§ 62.1-44.34:14 et. seq.) were modified. For example, a facility may be subject to the Oil Discharge Contingency Plan (ODCP) regulations and not subject to the pollution prevention requirements. Inconsistencies between the regulations can be eliminated by this proposal, resulting in a more efficient and understandable regulation for preventing or responding to a discharge of oil.

In addition, the DEQ has reviewed final tank vessel and facility response plan regulations implementing the provisions of the federal Oil Pollution Act of 1990 and found them to be compatible with the ODCP requirements of VR 680-14-07. The EPA facility regulations will not be applicable to the vast majority of facilities subject to the DEQ ODCP regulations. To better facilitate the one plan concept, DEQ will evaluate and take the necessary steps to accept USCG and EPA approved response plans either wholly or with state specific information added. Reevaluation of the administrative fee for approval will also be undertaken.

Section 62.1-44.34:15.1 of the State Water Control Law was amended to exempt certain ASTs located at facilities not engaged in the resale of oil from inventory control and testing for significant inventory variations requirements. Section 62.1-44.34:15.1.5 was added to enable the board to establish criteria for granting variances from the AST Pollution Prevention Requirements (VR 680-14-13) for facilities not engaged in the resale of oil.

In addition, § 62.1-44.34:17 was amended to provide that facilities not engaged in the resale of oil shall not be subject to § 62.1-44.34:15.1 until July 1, 1995 (changed until

Notices of Intended Regulatory Action

variance requirements are promulgated) and ASTs with a capacity of 5,000 gallons or less containing heating oil for consumption on the premises where stored be exempt from any requirements of § 62.1-44.34:15.1. In addition, the amendment provides that the definition of oil, for the purposes of §§ 62.1-44.34:15.1 and 62.1-44.34:16 and for any requirement under § 62.1-44.34:15 to install ground water monitoring wells, ground water protection devices, or to conduct ground water characterization studies, does not include asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure.

Estimated Impacts: All impacts associated with this intended regulatory action are expected to be beneficial to the regulated community as well as the DEQ. Consolidation of regulations within the AST program will enable the public, industry and the DEQ to better understand the impact of the regulations and to provide for options to be considered. Providing a coordinated spill response with the USCG and the EPA by accepting federally approved spill plans will demonstrate Virginia's concern for protecting the environment and eliminate duplication of regulatory requirements. The DEQ will require specific information to be submitted with the addition to demonstration of federal approvals. It is estimated that 450 AST facilities with approximately 2,500 ASTs will each save \$550 per year by not having to perform the inventory control or testing for variance requirements. Estimates are that the ability to grant variances will save approximately 100 facilities approximately \$1,000 per year. The extension of compliance is projected to affect 450 AST facilities with approximately 2,500 ASTs and will save each facility \$500 for the year extension. Exemption from pollution prevention requirements for heating oil ASTs of 5,000 gallons or less will save 750 AST facilities approximately \$500 per year per facility. The asphalt exemption will save 20 facilities statewide approximately \$10,000 per facility initially and \$1,000 per facility annually.

Alternatives: An alternative is to retain, unchanged, the existing separate regulations. This is not considered to be an efficient alternative. The proposed amendment to combine the four regulations into two is the least burdensome and intrusive alternative available.

Having to determine individual applicability of the regulations is counterproductive and not in the best interest of the DEQ or the regulated community. It is confusing at best and difficult for staff to coordinate compliance efforts. Additionally, having several response plans on a tank vessel or at a facility often leads to confusion of responsibility and therefore an ineffective response.

The 1994 statutory amendments to § 62.1-44.34:15.1 provided that facilities not engaged in the resale of oil should not be subject to VR 680-14-13 until July 1, 1995 (the new date is until variance provisions are promulgated); that specific ASTs located at these facilities should not be subject to inventory control; and, that these facility operators should be able to request variances to VR 680-14-13 based on established criteria. This requirement is mandated by statute and provides a beneficial extension of the compliance date as well as enables DEQ to evaluate evolving technologies for acceptance within the regulation.

Comments: The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on this intended regulatory action and on the costs and benefits of the stated alternatives as well as other alternatives. To be considered, comments should be directed to Mr. David Ormes, at the address below and should be received by 4 p.m. on Wednesday, January 17, 1996.

Public Meetings: Public meetings will be held on Monday, January 8, 1996, at 7 p.m. at the Virginia War Memorial Auditorium, 621 S. Belvidere Street, Richmond, and on Wednesday, January 10, 1996, at 7 p.m. in the Roanoke County Administration Center, 5204 Bernard Drive, Roanoke.

Accessibility to Persons with Disabilities: The meeting will be held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility should contact Mr. David Ormes, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009, or by telephone at (804) 762-4263 (effective 12/1/95 - 698-4263) or TDD (804) 762-4021 (effective 12/1/95 - 698-4021). Persons needing interpreter services for the deaf must notify Mr. Ormes no later than Wednesday, December 27, 1995.

Advisory Committee/Group: All legal requirements related to public participation and all public participation guidelines will be strictly followed. An ad hoc advisory group will be convened to provide input to the department regarding the content of the proposed regulation and to ensure that the citizens have reasonable access and opportunity to present their comments and concerns. The ad hoc group may be composed of representatives from state, federal and local agencies; industry, manufacturers, facility and tank vessel owners/operators, environmental groups and the public. This group will meet at least twice during the regulation development.

The DEQ intends to hold at least one public hearing (informational proceeding) on the proposed regulation after it is published in the Register of Regulations. The public hearing will be convened by a member of the board. The DEQ does not intend to hold a formal hearing (evidentiary) on the proposed regulation after the proposal is published in the Register of Regulations.

Impact on Family Formation, Stability and Autonomy: DEQ will consider the impact of the regulatory actions on family formation, stability and autonomy during the formulation of proposals. However, it is not anticipated that these regulations will have a direct impact on families. There may be positive indirect impacts in that the proposals will result in regulatory efficiency, thus promoting job retention and economic growth.

The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Notices of Intended Regulatory Action

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-101; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-14-12 [9 VAC 25-130-10 et seq.] Facility and Aboveground Storage Tank Registration Requirements Regulation.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation (VR 680-14-07:1, Facility and Aboveground Storage Tank Requirements). (See notice regarding VR 680-14-07:1 [9 VAC 25-95-10 et seq.] The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-98; Filed November 8, 1995, 11:32 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to consider repealing regulations entitled: **VR 680-14-13 [9 VAC 25-140-10 et seq.] Aboveground Storage Tanks Pollution Prevention.** The purpose of the proposed action is to repeal this regulation and incorporate necessary provisions into a new regulation (VR 680-14-07:1, Facility and Aboveground Storage Tank Requirements). (See notice regarding VR 680-14-07:1 [9 VAC 25-95-10 et seq.] The agency intends to hold a public hearing on the proposed action after publication.

Statutory Authority: §§ 62.1-44.34:15, 62.1-44.34:15.1, 62.1-44.34:19.1, and 62.1-44.34:21 of the Code of Virginia.

Public comments may be submitted until 4 p.m. on January 17, 1996.

Contact: David Ormes, Office of Spill Response and Remediation, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

VA.R. Doc. No. R96-103; Filed November 8, 1995, 11:32 a.m.

PUBLIC COMMENT PERIODS - PROPOSED REGULATIONS



PUBLIC COMMENT PERIODS REGARDING STATE AGENCY REGULATIONS

Effective July 1, 1995, publication of notices of public comment periods in a newspaper of general circulation in the state capital is no longer required by the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia). Chapter 717 of the 1995 Acts of Assembly eliminated the newspaper publication requirement from the Administrative Process Act. In *The Virginia Register of Regulations*, the Registrar of Regulations has developed this section entitled "Public Comment Periods - Proposed Regulations" to give notice of public comment periods and public hearings to be held on proposed regulations. The notice will be published once at the same time the proposed regulation is published in the Proposed Regulations section of the *Virginia Register*. The notice will continue to be carried in the Calendar of Events section of the *Virginia Register* until the public comment period and public hearing date have passed.

Notice is given in compliance with § 9-6.14:7.1 of the Code of Virginia that the following public hearings and public comment periods regarding proposed state agency regulations are set to afford the public an opportunity to express their views.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

February 23, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-160, Narrative for the Amount, Duration, and Scope of Services and Standards Established and 12 VAC 30-60-10 through 12 VAC 30-60-160, Methods Used to Assure High Quality of Care (1995 Expansion of Durable Medical Equipment)**. The purpose of this proposal is to eliminate the requirement that recipients meet home bound criteria in order to receive durable medical equipment by expanding the coverage of medically necessary durable medical equipment and supplies to the entire Medicaid population.

Statutory Authority: § 32.1-325 of the Code of Virginia and § 396 E 5 of the 1995 Appropriations Act.

Public comments may be submitted until February 23, 1996, to C. Mack Brankley, Director, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

February 23, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **VR 460-03-4.1940:1 [12 VAC 30-90-20 through 12 VAC 30-90-260] Nursing Home Payment System**. The purpose of this proposal is to promulgate

permanent regulations providing for legal fees for nursing facility appeals. An emergency regulation was previously developed in response to a mandate from the General Assembly in the 1995 Appropriations Act, § 396(E)(9). 42 CFR 447 sets out the requirements for the reimbursement of all covered services. 42 CFR 447.253(e) requires the provision of an appeals mechanism for providers on issues related to their reimbursement.

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

Public comments may be submitted until February 23, 1996, to N. Stanley Fields, Director, Division of Financial Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

February 23, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to adopt regulations entitled: **VR 460-04-2.2100. [12 VAC 30-110-1200 through 12 VAC 30-110-1240]. Part VII, Medical Assistance Eligibility Resulting from Welfare Reform**. The purpose of this proposal is to provide transitional medical assistance benefits to individuals who lose AFDC cash assistance as mandated by Chapter 450 of the 1995 Acts of Assembly.

Statutory Authority: §§ 32.1-325 and 63.1-133.46 of the Code of Virginia.

Public comments may be submitted until February 23, 1996, to Pat Sykes or Ann Cook, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Public Comment Periods - Proposed Regulations

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

February 23, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **VR 460-04-8.14 [12 VAC 30-120-260 through 12 VAC 30-120-350]. MEDALLION.** The purpose of this proposal is to expand mandatory enrollment in the MEDALLION program to aged, blind, and disabled recipients based on the 1995 Appropriations Act.

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

Public comments may be submitted until February 23, 1996, to Kathy Thompson, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

January 17, 1996 - 1 p.m. -- Public Hearing
Roanoke City Clerk's Office, Municipal Building, 215 Church Street, S.W., Room 456, Roanoke, Virginia.

January 22, 1996 - 1 p.m. -- Public Hearing
Williamsburg Regional Library, 515 Scotland Street, Williamsburg, Virginia.

January 31, 1996 - 1 p.m. -- Public Hearing
Stafford County Government Center, 1300 Courthouse Road, Board of Supervisors Chambers, Stafford, Virginia.

February 24, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled: **VR 615-01-57 [22 VAC 40-35-10 et seq.] The Virginia Independence Program.** The proposed regulation revises the Aid to Families with Dependent Children (AFDC) Program. It amends existing eligibility criteria related to (i) school attendance; (ii) receipt of assistance by minor parents; and (iii) cooperation in establishing and collecting support. The regulation adds (i) a rule placing a cap on additional benefits for children born to an AFDC family, and (ii) a work component, the Virginia Initiative for Employment Not Welfare (VIEW), in which able-bodied recipients must participate. The proposed regulation also includes a diversionary assistance component which offers otherwise eligible

families the option to receive a single payment of up to four months assistance to meet an emergency, thereby avoiding the need for ongoing monthly AFDC benefits.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Public comments may be submitted until February 24, 1996, to Constance O. Hall, Program Manager, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Carolyn Ellis, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1730.

PROPOSED REGULATIONS

For information concerning Proposed Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates proposed new text.
Language which has been stricken indicates proposed text for deletion.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **State Plan for Medical Assistance Relating to Home Health Services.**

12 VAC 30-50-160. Narrative for the Amount, Duration and Scope of Services: Home Health Services.

VR 460-02-2.1300 [12 VAC 30-60-10 through 12 VAC 30-60-160]. Standards Established and Methods Used to Assure High Quality of Care.

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 396 E 5 of the 1995 Appropriations Act.

Public Hearing Date: N/A - Written comments may be submitted until February 23, 1996.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1995. The Code, at § 9-6.14:4.1 C requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on August 21, 1995.

42 CFR 440.70 and 441.15 establish and define home health services and the companion durable medical equipment. The Health Care Financing Administration has notified DMAS that coverage of durable medical equipment (DME) and supplies must be consistently applied across all recipient groups. All covered DME and supplies may be restricted to only those individuals who meet the home bound criteria or the service may be made available to the entire Medicaid population. The policy formerly applied by DMAS -- that of providing a few types of DME to the entire Medicaid population -- was not a federally acceptable interpretation. In order to avoid the negative impact on those persons already receiving DME and supplies, DMAS is expanding this service's coverage to all Medicaid recipients.

Purpose: The purpose of this proposal is to eliminate the requirement that recipients meet home bound criteria in order to receive durable medical equipment by expanding the coverage of medically necessary durable medical equipment

and supplies to the entire Medicaid population. This change was mandated by § 396 E 5 of the 1995 Appropriations Act. This proposed regulation varies from the previous emergency regulation in two respects: it requires that DME providers be appropriately licensed before they can become Medicaid providers and it delineates criteria for coverage of specific pieces of durable medical equipment.

Summary and Analysis: Durable medical equipment and supplies is a federally required service under home health services (42 CFR 440.70). 42 CFR 441.15 defines that home health services include, at a minimum, nursing services, home health aide services, and medical supplies, equipment, and appliances. The State Plan is required to indicate that these are covered services for the categorically needy recipients and medically needy recipients to whom skilled nursing facility services are provided under the Plan.

The Department of Medical Assistance Services (DMAS) has been providing home health services and the concomitant DME since 1969. For most of this time, the Virginia Department of Health, through its local health departments, granted prior authorization for DME consistent with DMAS policies. Approximately six years ago, DMAS assumed responsibility for authorizing durable medical equipment and supplies. Historically, DMAS has provided all available DME to patients meeting home health services criteria but only certain DME to the entire Medicaid population. Prior to the current emergency regulation, the entire Medicaid population was limited to ostomy, respiratory, and dialysis equipment and supplies.

In order to receive any other DME (i.e., wheelchairs, diapers, augmentative communication devices), Medicaid recipients had to meet the home health criteria and their physicians had to order the equipment or supply which they believed to be medically necessary. Home health criteria are as follows: the patient is unable to leave home without the assistance of others or the use of special equipment, the patient is ordered by the physician to restrict his activity due to a weakened condition, the patient has a mental or emotional problem which is manifested in part by refusal to leave his home environment or is of such a nature that it would not be considered safe for him to leave home unattended, or the patient has an active communicable disease and the physician restricts the patient to prevent exposing others to the disease.

Durable medical equipment and supplies still must be ordered by a physician and be medically necessary to treat a health care condition. A Certificate of Medical Necessity (CMN) is required and must be in place within 21 days from the time that the ordered supplies are rendered. A CMN must be based on an assessment of the patient's medical needs. The CMN must contain all medical documentation that is required by DMAS' DME policies, procedures, regulations, and laws. The CMN is valid for six months for Medicaid recipients who are 21 years of age and under

(children). For the adult population, the CMN is valid for one year. DMAS has the authority to determine a different length of time a CMN is valid based on submitted medical documentation. The CMN may be completed by the DME provider and other health care professionals, but must be signed and dated, at the time of service, by the attending physician. Supporting documentation may be attached to the CMN; however, the physician's order, in its entirety, must be recorded on the CMN. The DME provider must provide the equipment and supplies as prescribed by the attending physician on the CMN. Orders must not be changed unless the DME provider obtains a new CMN with the physician signature prior to ordering or providing to the patient the equipment or supplies. It is the responsibility of the DME provider to maintain a copy of the CMN on file for DMAS' post payment audit reviews.

Generic orders are not acceptable and each component must be individually identified. Durable medical equipment providers are not allowed to create or revise CMN's or supporting documentation for equipment or supplies provided after the post payment review has taken place.

Issues: This regulation will allow DMAS to provide medically necessary durable medical equipment to the entire Medicaid population regardless of whether individuals meet the above home health criteria. The primary advantage of this change is that persons who are Medicaid eligible that do not meet the home health criteria will be able to get durable medical equipment and supplies. For example, recipients who are diabetic will be able to obtain Medicaid coverage of their diabetic supplies, in their homes without requiring institutionalization, without having to meet the home health criteria. There are no readily identifiable disadvantages to the public for this regulatory action. Providing DME to the entire Medicaid population will permit more recipients who have not been able to obtain medically necessary DME to have their medical needs met in their homes rather than obtaining them in institutions. The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: Item 396 E 5 of the 1995 Acts of Assembly required DMAS to provide coverage for medically necessary durable medical equipment for all Medicaid eligibles. There are 1,765 DME providers presently enrolled in Medicaid to render services. DMAS estimates that expenditures for DME will increase approximately \$1,000,000 total funds (\$500,000 GF; \$500,000 NGF) in FY 96 as a result of this regulatory change. The majority of these expenditures is expected to be for the purchase of blood glucose monitors and supplies which allow diabetics to monitor their blood sugar levels at home. DMAS has not received any additional appropriations for this initiative and will reimburse any DME expenditures incurred with existing FY 96 appropriations. There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process

Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected number of persons and employment positions to be affected; and the projected costs to affected businesses or entities to implement or comply with the regulation. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Currently, DMAS provides for reimbursement of all available durable medical equipment (DME) for Medicaid recipients meeting home health care criteria, and reimbursement of certain DME for all other Medicaid recipients. Provisions of the 1995 Appropriation Act, however, require that reimbursement for DME be applied consistently across all groups of Medicaid recipients. The proposed regulation brings Virginia into compliance with these provisions by eliminating the requirement that recipients meet home health care criteria to receive reimbursement for all available DME.

Estimated Economic Impact

There are at least two likely economic impacts associated with the proposed regulation. The first is the additional cost associated with expanding the program for reimbursement of DME. According to estimates provided by DMAS this cost will be approximately \$1,000,000 per year. Seventy-five percent of this total cost is comprised of diabetic supplies (primarily glucose meters). The remaining 25% is comprised of expenses for pain management (primarily transcutaneous electrical nerve stimulation units) and expenses for wound management (bandages, etc.).

The second economic impact of the proposed regulation is the benefit derived by persons who are Medicaid eligible but not home-bound from obtaining needed DME. Although it would be difficult and expensive to provide an exact dollar figure for these benefits, they nonetheless bear consideration.

Projected Number of Businesses or Other Entities to Whom the Regulation will Apply

The proposed regulation affects all Medicaid recipients requiring DME and the 1,765 DME providers currently enrolled in Medicaid to provide services.

Localities and Types of Businesses Particularly Affected

No localities are particularly affected by this proposed regulation. The proposed regulation does particularly affect DME providers.

Projected Number of Persons and Employment Positions Affected

The regulation is not anticipated to have a measurable effect on employment.

Projected Costs to Affected Businesses or Entities

There are no anticipated costs to affected businesses or entities.

Proposed Regulations

Agency Response to Economic Impact Analysis:

The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medical Assistance Eligibility Resulting from Welfare Reform.

Summary:

The proposed amendments eliminate the requirement that recipients meet home bound criteria in order to receive durable medical equipment by expanding the coverage of medically necessary durable medical equipment and supplies to the entire Medicaid population. This change was mandated by § 396 E 5 of the 1995 Appropriations Act. This proposed regulation varies from the previous emergency regulation in two respects: it requires that DME providers be appropriately licensed before they can become Medicaid providers and it delineates criteria for coverage of specific pieces of durable medical equipment.

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1995. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on August 21, 1995.

42 CFR 440.70 and 441.15 establish and define home health services and the companion durable medical equipment. The Health Care Financing Administration has notified DMAS that coverage of DME and supplies must be consistently applied across all recipient groups. All covered DME and supplies may be restricted to only those individuals who meet the homebound criteria or the service may be made available to the entire Medicaid population. The policy formerly applied by DMAS -- that of providing a few types of DME to the entire Medicaid population -- was not a federally acceptable interpretation. In order to avoid the negative impact on those persons already receiving DME and supplies, DMAS is proposing the expansion of this service's coverage to all Medicaid recipients.

12 VAC 30-50-160. 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. Home health services shall be provided in accordance with guidelines found in the Virginia Medicaid Home Health Manual.

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 registered nurse.
2. Home health aides must meet the certification requirements specified in 42 CFR 484.36.
3. For home health aide services, patients may receive up to 32 visits 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. ~~Durable medical supplies, equipment, and appliances (DME) and supplies~~ suitable for use in the home.

1. ~~General requirements and conditions.~~

~~a. All medically necessary supplies, and equipment, and appliances are shall be covered for Medicaid recipients who meet home health criteria. 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. All medical supplies, equipment, and appliances shall be provided in accordance with guidelines found in the Virginia Medicaid DME and Supplies Manual.~~

~~b. DME providers shall adhere to all applicable DMAS policies, laws, and regulations for durable medical equipment and supplies. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for durable medical equipment or supplies which are regulated by such licensing agency or agencies.~~

~~c. DME and supplies must be furnished pursuant to a Certificate of Medical Necessity (CMN) (DMAS-352).~~

~~d. A CMN shall contain a physician's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto. The CMN shall be valid for a maximum period of six months for Medicaid recipients 21 years of age and younger. The maximum valid time period for Medicaid recipients older than 21 years of age is 12 months. The validity of the CMN shall terminate when the recipient's medical need for the prescribed DME or supplies ends.~~

~~e. DME must be furnished exactly as ordered by the attending physician on the CMN. The CMN and any supporting verifiable documentation must be complete~~

(signed and dated by the physician) and in the provider's possession within 21 days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME must be specifically ordered on the CMN by the physician. For example, the order must specify IV pole, pump, and tubing. A general order for IV supplies shall not be acceptable.

f. The CMN shall not be changed, altered, or amended after the attending physician has signed it. If changes are necessary, as indicated by the recipient's condition, in the ordered DME or supplies, the DME provider must obtain a new CMN. New CMNs must be signed and dated by the attending physician within 21 days from the time the ordered supplies are furnished by the DME provider.

g. DMAS shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other health care professionals, but it must be signed and dated by the attending physician. Supporting documentation may be attached to the CMN but the attending physician's entire order must be on the CMN.

h. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create nor revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process.

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. *Reserved.*

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 *not* 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 12 VAC 30-50-500.

~~5. Durable medical equipment, supplies, and appliances must be ordered by a physician and be medically necessary to treat a health care condition. The physician shall complete a written certificate of medical necessity for all durable medical equipment, supplies, and appliances based on an assessment of the patient's needs. The medical and supply provider shall keep a copy of the certificate of medical necessity. The certificate of medical necessity shall be signed and dated by the physician. *Reserved.*~~

6. The medical equipment and supply vendor must provide the equipment and supplies as prescribed by the physician on the certificate of medical necessity. Orders shall not be changed unless the vendor obtains a new certificate of medical necessity prior to ordering or providing the equipment or supplies to the patient.

7. Medicaid shall not provide reimbursement to the medical equipment and supply vendor for services provided prior to the date prescribed by the physician or prior to the date of the delivery or when services are not provided in accordance with published policies and procedures. If reimbursement is denied for one of these reasons, the medical equipment and supply vendor may not bill the Medicaid recipient for the service that was provided.

~~8. Only supplies, equipment, and appliances that are considered medically necessary shall be covered. All of the following must be met to be considered medically necessary. The supplies, equipment, or appliance must be:~~

~~a. A reasonable and necessary part of the recipient's treatment plan;~~

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~~b. Consistent with the symptoms, diagnosis, or medical condition of the illness or injury under treatment;~~

~~c. Not furnished for the convenience of the recipient, the family, the attending practitioner, or other practitioner or supplier;~~

~~d. Necessary and consistent with generally accepted professional medical standards (i.e., not experimental or investigational);~~

~~e. Established as safe and effective for the recipient's treatment; and~~

~~f. Furnished at the most appropriate level which is suitable for use in the recipient's home environment.~~

8. The following criteria must be satisfied through the submission of adequate and verifiable documentation satisfactory to the department. Medically necessary DME and supplies shall be:

a. Ordered by the physician on the CMN;

b. A reasonable and necessary part of the recipient's treatment plan;

c. Consistent with the recipient's diagnosis and medical condition particularly the functional limitations and symptoms exhibited by the recipient;

d. Not furnished solely for the convenience, safety, or restraint of the recipient, the family, attending physician, or other practitioner or supplier;

e. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and

f. Furnished at a safe, effective, and cost effective level suitable for use in the recipient's home environment.

9. Coverage of enteral nutrition (EN) and total parenteral nutrition (TPN) which do not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN and TPN shall not include the provision of routine infant formulae.

E. Physical therapy, occupational therapy, or speech/language pathology services and audiology services provided by a home health agency or physical 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.

12 VAC 30-60-10 through 12 VAC 30-60-160. Standards Established and Methods Used to Assure High Quality of Care.

~~§ 1. 12 VAC 30-60-10. Institutional care.~~

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

~~§ 2. 12 VAC 30-60-20. Utilization control: general acute care hospitals.~~

~~A. General acute care hospitals.~~

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

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

a. 1. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care.

b. 2. The physician, or physician assistant under the supervision of a physician, must recertify, at least every 60 days, that patients continue to require inpatient hospital or mental hospital care.

e. 3. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services.

B. 12 VAC 30-60-30. *Utilization control:* long-stay acute care hospitals (nonmental hospitals).

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

a. 1. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care hospital placement, and any additional information that justifies the need for intensive services. Physician certification must accompany the request. Periods of care not authorized by DMAS shall not be approved for payment.

b. 2. These individuals must have long-term health conditions requiring close medical supervision, the need for 24-hour licensed nursing care, and the need for specialized services or equipment needs.

e. 3. At a minimum, these individuals must require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is the designated unit must be on the nursing unit 24 hours a day on which the resident resides), and coordinated multidisciplinary team approach to meet needs that must include daily therapeutic leisure activities.

d. 4. In addition, the individual must meet at least one of the following requirements:

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

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

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

(a) (1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) (2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only);

(e) (3) Dialysis treatment that is provided on-unit (i.e. peritoneal dialysis);

(d) (4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) (5) Extensive wound care requiring debridement, irrigation, packing, etc., more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body); or

(f) (6) Ongoing management of multiple unstable ostomies (a single ostomy does not constitute a requirement for special care) requiring frequent care (i.e. suctioning every hour; stabilization of feeding; stabilization of elimination, etc.).

e. 5. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the individuals' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

f. 6. When the individual no longer meets long-stay acute care hospital criteria or requires services that the facility is unable to provide, then the individual must be discharged.

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

a. 1. Long-stay acute care hospital stays shall be preauthorized by the submission of a completed comprehensive assessment instrument, a physician certification of the need for long-stay acute care, and any additional information that justifies the need for intensive services. Periods of care not authorized by DMAS shall not be approved for payment.

b. 2. The child must have ongoing health conditions requiring close medical supervision, the need for 24-hour licensed nursing supervision, and the need for specialized services or equipment. The recipient must be age 21 or under.

e. 3. The child must minimally require physician visits at least once weekly, licensed nursing services 24 hours a day (a registered nurse whose sole responsibility is that nursing unit must be on the unit 24 hours a day on which the child is residing), and a coordinated multidisciplinary team approach to meet needs.

d. 4. In addition, the child must meet one of the following requirements:

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

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

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

(a) (1) Ongoing administration of intravenous medications or nutrition (i.e. total parenteral nutrition (TPN), antibiotic therapy, narcotic administration, etc.);

(b) (2) Special infection control precautions such as universal or respiratory precaution (this does not include handwashing precautions only or isolation for normal childhood diseases such as measles, chicken pox, strep throat, etc.);

(e) (3) Dialysis treatment that is provided within the facility (i.e. peritoneal dialysis);

(d) (4) Daily respiratory therapy treatments that must be provided by a licensed nurse or a respiratory therapist;

(e) (5) Extensive wound care requiring debridement, irrigation, packing, etc. more than two times a day (i.e. grade IV decubiti; large surgical wounds that cannot be closed; second- or third-degree burns covering more than 10% of the body);

(f) (6) Ostomy care requiring services by a licensed nurse;

(g) (7) Services required for terminal care.

e. 5. In addition, the long-stay acute care hospital must provide for the educational and habilitative needs of the child. These services must be age appropriate, must meet state educational requirements, and must be appropriate to the child's cognitive level. Services must also be individualized to meet the child's specific needs and must be provided in an organized manner that encourages the child's participation. Services may include, but are not limited to, school, active treatment for mental retardation, habilitative therapies, social skills, and leisure activities. Therapeutic leisure activities must be provided daily.

f. 6. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no coverage shall be provided.

g. 7. When the resident no longer meets long-stay hospital criteria or requires services that the facility is unable to provide, the resident must be discharged.

~~G.~~ 12 VAC 30-60-40. *Utilization control:* nursing facilities.

4. A. Long-term care of residents in nursing facilities will be provided in accordance with federal law using practices and procedures that are based on the resident's medical and social needs and requirements. All nursing facility services, including specialized care, shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

2. B. Nursing facilities must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity. This assessment must be conducted no later than 14 days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Each resident must be reviewed at least quarterly, and a complete assessment conducted at least annually.

3. C. The Department of Medical Assistance Services shall periodically conduct a validation survey of the assessments completed by nursing facilities to determine that services provided to the residents are medically necessary and that needed services are provided. The survey will be composed of a sample of Medicaid residents and will include review of both current and closed medical records.

4. D. Nursing facilities must submit to the Department of Medical Assistance Services resident assessment information at least every six months for utilization review. If an assessment completed by the nursing facility does not reflect accurately a resident's capability to perform activities of daily living and significant impairments in functional capacity, then reimbursement to nursing facilities may be adjusted during the next quarter's reimbursement review. Any individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties.

5. E. In order for reimbursement to be made to the nursing facility for a recipient's care, the recipient must meet nursing facility criteria as described in Supplement 1 to Attachment 3-1-C, Part 4 12 VAC 30-60-300 (Nursing Facility Criteria).

In order for reimbursement to be made to the nursing facility for a recipient requiring specialized care, the recipient must meet specialized care criteria as described in Supplement 1 to Attachment 3-1-C, Part 2 12 VAC 30-60-320 (Adult Specialized Care Criteria) or Part 3 12 VAC 30-60-340 (Pediatric/Adolescent Specialized Care Criteria). Reimbursement for specialized care must be preauthorized by the Department of Medical Assistance Services. In addition, reimbursement to nursing facilities for residents requiring specialized care will only be made on a contractual basis. Further specialized care services requirements are set forth below.

In each case for which payment for nursing facility services is made under the State Plan, a physician must recommend at the time of admission or, if later, the time at which the individual applies for medical assistance under the State Plan that the individual requires nursing facility care.

6. F. For nursing facilities, a physician must approve a recommendation that an individual be admitted to a facility. The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter. At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

7. G. When the resident no longer meets nursing facility criteria or requires services that the nursing facility is unable to provide, then the resident must be discharged.

8. H. Specialized care services.

a. 1. Providers must be nursing facilities certified by the Division of Licensure and Certification, State Department of Health, and must have a current signed participation agreement with the Department of Medical Assistance Services to provide nursing facility care. Providers must agree to provide care to at least four residents who meet the specialized care criteria for children/adolescents or adults.

b. 2. Providers must be able to provide the following specialized services to Medicaid specialized care recipients:

- (1) a. Physician visits at least once weekly (after initial physician visit, subsequent visits may alternate between physician and physician assistant or nurse practitioner);
- (2) b. Skilled nursing services by a registered nurse available 24 hours a day;
- (3) c. Coordinated multidisciplinary team approach to meet the needs of the resident;
- (4) d. Infection control;
- (5) e. For residents under age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of 90 minutes each day, five days per week;
- (6) f. For residents over age 21 who require two of three rehabilitative services (physical therapy, occupational therapy, or speech-language pathology services), therapy services must be provided at a minimum of two hours per day, five days a week;
- (7) g. Ancillary services related to a plan of care;
- (8) h. Respiratory therapy services by a board-certified therapist (for ventilator patients, these services must be available 24 hours per day);
- (9) i. Psychology services by a board-certified psychologist or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical related to a plan of care;
- (10) j. Necessary durable medical equipment and supplies as required by the plan of care;
- (11) k. Nutritional elements as required;

(12) l. A plan to assure that specialized care residents have the same opportunity to participate in integrated nursing facility activities as other residents;

(13) m. Nonemergency transportation;

(14) n. Discharge planning; and

(15) o. Family or caregiver training.

e. 3. Providers must coordinate with appropriate state and local agencies for educational and habilitative needs for Medicaid specialized care recipients who are under the age of 21.

D. 12 VAC 30-60-50. *Utilization control:* Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and Institutions for Mental Disease (IMD).

4. A. With respect to each Medicaid-eligible resident in an ICF/MR or IMD in Virginia, a written plan of care must be developed prior to admission to or authorization of benefits in such facility, and a regular program of independent professional review (including a medical evaluation) shall be completed periodically for such services. The purpose of the review is to determine: the adequacy of the services available to meet his current health needs and promote his maximum physical well being; the necessity and desirability of his continued placement in the facility; and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Long-term care of residents in such facilities will be provided in accordance with federal law that is based on the resident's medical and social needs and requirements.

2. B. With respect to each ICF/MR or IMD, periodic on-site inspections of the care being provided to each person receiving medical assistance, by one or more independent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), shall be conducted. The review shall include, with respect to each recipient, a determination of the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, the necessity and desirability of continued placement in the facility, and the feasibility of meeting his health care needs through alternative institutional or noninstitutional services. Full reports shall be made to the state agency by the review team of the findings of each inspection, together with any recommendations.

3. C. In order for reimbursement to be made to a facility for the mentally retarded, the resident must meet criteria for placement in such facility as described in Supplement 1, Part 4, to Attachment 3-1-C 12 VAC 30-60-360 and the facility must provide active treatment for mental retardation.

4. D. In each case for which payment for nursing facility services for the mentally retarded or institution for mental disease services is made under the State Plan:

- a. 1. A physician must certify for each applicant or recipient that inpatient care is needed in a facility for the mentally retarded or an institution for mental disease. The certification must be made at the time of admission or, if an individual applies for assistance while in the

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facility, before the Medicaid agency authorizes payment; and

b. 2. A physician, or physician assistant or nurse practitioner acting within the scope of the practice as defined by state law and under the supervision of a physician, must recertify for each applicant at least every 365 days that services are needed in a facility for the mentally retarded or institution for mental disease.

5. E. When a resident no longer meets criteria for facilities for the mentally retarded or an institution for mental disease or no longer requires active treatment in a facility for the mentally retarded, then the resident must be discharged.

6. F. All services provided in an IMD and in an ICF/MR shall be provided in accordance with guidelines found in the Virginia Medicaid Nursing Home Manual.

E. 12 VAC 30-60-60. *Utilization control:* psychiatric services resulting from an EPSDT screening.

Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403 and § 4b to Attachment 3.1 A & B Supplement 4 12 VAC 30-50-140 D 2, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.

1. Definitions. The following words and terms, when used in the context of this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Admission" means the provision of services that are medically necessary and appropriate, and there is a reasonable expectation the patient will remain at least overnight and occupy a bed.

"CFR" means the Code of Federal Regulations.

"Psychiatric services resulting from an EPSDT screening" means services rendered upon admission to a psychiatric hospital.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMAS" means the Department of Medical Assistance Services.

"JCAHO" means Joint Commission on Accreditation of Hospitals.

"Medical necessity" means that the use of the hospital setting under the direction of a physician has been demonstrated to be necessary to provide such services in lieu of other treatment settings and the services can reasonably be expected to improve the recipient's condition or to prevent further regression so that the services will no longer be needed.

"VDH" means the Virginia Department of Health.

2. It shall be documented that treatment is medically necessary and that the necessity was identified as a result of an EPSDT screening. Required patient documentation shall include, but not be limited to, the following:

a. Copy of the screening report showing the identification of the need for further psychiatric diagnosis and possible treatment.

b. Copy of supporting diagnostic medical documentation showing the diagnosis that supports the treatment recommended.

c. For admission to a psychiatric hospital, for psychiatric services resulting from an EPSDT screening, certification of the need for services by an interdisciplinary team meeting the requirements of 42 CFR §§ 441.153 or 441.156 that:

(1) Ambulatory care resources available in the community do not meet the recipient's treatment needs;

(2) Proper treatment of the recipient's psychiatric condition requires admission to a psychiatric hospital under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed, consistent with 42 CFR § 441.152.

3. The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization.

4. Providers of psychiatric services resulting from an EPSDT screening must:

a. Be a psychiatric hospital accredited by JCAHO;

b. Assure that services are provided under the direction of a physician;

c. Meet the requirements in 42 CFR Part 441 Subpart D;

d. Be enrolled in the Commonwealth's Medicaid program for the specific purpose of providing psychiatric services resulting from an EPSDT screening.

F. 12 VAC 30-60-70. *Utilization control:* home health services.

1. A. Home health services which meet the standards prescribed for participation under Title XVIII will be supplied.

2. B. Home health services shall be provided by a licensed home health agency on a part-time or intermittent basis to a homebound recipient in his place of residence. The place of residence shall not include a hospital or nursing facility. Home health services must be prescribed by a physician and be part of a written plan of care utilizing the Home Health Certification and Plan of Treatment forms which the physician shall review at least every 62 days. For receipt of durable medical equipment and supplies (DME)-only services, refer to subsection 1 of this section.

3. C. Except in limited circumstances described in subdivision 4 below, to be eligible for home health services, the patient must be essentially homebound. The patient does not have to be bedridden. Essentially homebound shall mean:

- a. 1. The patient is unable to leave home without the assistance of others who are required to provide medically necessary health care interventions or the use of special medical equipment;
- b. 2. The patient has a mental or emotional problem which is manifested in part by refusal to leave the home environment or is of such a nature that it would not be considered safe for him to leave home unattended;
- c. 3. The patient is ordered by the physician to restrict activity due to a weakened condition following surgery or heart disease of such severity that stress and physical activity must be avoided;
- d. 4. The patient has an active communicable disease and the physician quarantines the patient.

4. D. Under the following conditions, Medicaid will reimburse for home health services when a patient is not essentially homebound. When home health services are provided because of one of the following reasons, an explanation must be included on the Home Health Certification and Plan of Treatment forms:

- a. 1. When the combined cost of transportation and medical treatment exceeds the cost of a home health services visit;
- b. 2. When the patient cannot be depended upon to go to a physician or clinic for required treatment, and, as a result, the patient would in all probability have to be admitted to a hospital or nursing facility because of complications arising from the lack of treatment;
- c. 3. When the visits are for a type of instruction to the patient which can better be accomplished in the home setting;
- d. 4. When the duration of the treatment is such that rendering it outside the home is not practical.

5. E. Covered services. Any one of the following services may be offered as the sole home health service and shall not be contingent upon the provision of another service.

- a. 1. Nursing services,
- b. 2. Home health aide services,
- c. 3. Physical therapy services,
- d. 4. Occupational therapy services,
- e. 5. Speech-language pathology services, or
- f. 6. Medical supplies, equipment, and appliances suitable for use in the home.

6. F. General conditions. The following general conditions apply to skilled nursing, home health aide, physical therapy, occupational therapy, and speech-language pathology services provided by home health agencies.

a. 1. The patient must be under the care of a physician who is legally authorized to practice and who is acting within the scope of his license. The physician may be the patient's private physician or a physician on the staff of the home health agency or a physician working under an arrangement with the institution which is the patient's residence or, if the agency is hospital-based, a physician on the hospital or agency staff.

b. 2. Services shall be furnished under a written plan of care and must be established and periodically reviewed by a physician. The requested services or items must be necessary to carry out the plan of care and must be related to the patient's condition. The written plan of care shall appear on the Home Health Certification and Plan of Treatment forms. *The initial plan of care must be reviewed, signed, and dated by the attending physician, or physician designee, no later than 21 days after the implementation of the plan of care.*

c. 3. A physician recertification shall be required at intervals of at least once every 62 days, must be signed and dated by the physician who reviews the plan of care, and should be obtained when the plan of care is reviewed. The physician recertification statement must indicate the continuing need for services and should estimate how long home health services will be needed. Recertifications must appear on the Home Health Certification and Plan of Treatment forms.

d. 4. The physician orders for therapy services shall include the specific procedures and modalities to be used, identify the specific discipline to carry out the plan of care, and indicate the frequency and duration for services.

e. 5. The physician orders *DMAS-352 Certificate of Medical Necessity (CMN)* for durable medical equipment and supplies shall include the specific item identification ~~including all modifications ordered and each component must be individually identified.~~ *The CMN shall include a narrative clinical diagnosis which relates the diagnosis and equipment ordered to the recipient's specific need, the frequency of use, the number of supplies needed monthly, and an estimate of how long the recipient will require the use of the equipment or supplies. All durable medical equipment or and supplies requested ordered must be directly related to the physician's plan of care and to the patient's recipient's condition and medical treatment/need.*

f. 6. A written physician's statement located in the medical record must certify that:

(1) a. The home health services are required because the individual is confined to his home (except when receiving outpatient services);

(2) b. The patient needs licensed nursing care, home health aide services, physical or occupational therapy, speech-language pathology services, or durable medical equipment and/or supplies;

(3) c. A plan for furnishing such services to the individual has been established and is periodically reviewed by a physician; and

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(4) *d.* These services were furnished while the individual was under the care of a physician.

g. 7. The plan of care shall contain at least the following information:

- (1) *a.* Diagnosis and prognosis,
- (2) *b.* Functional limitations,
- (3) *c.* Orders for nursing or other therapeutic services,
- (4) *d.* Orders for medical supplies and equipment, when applicable
- (5) *e.* Orders for home health aide services, when applicable,
- (6) *f.* Orders for medications and treatments, when applicable,
- (7) *g.* Orders for special dietary or nutritional needs, when applicable, and
- (8) *h.* Orders for medical tests, when applicable, including laboratory tests and x-rays.

7. *G.* Utilization review shall be performed by DMAS to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. *Such post payment review audits may be unannounced.* Services not specifically documented in patients' medical records as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

8. *H.* All services furnished by a home health agency, whether provided directly by the agency or under arrangements with others, must be performed by appropriately qualified personnel. The following criteria shall apply to the provision of home health services:

a. 1. Nursing services. Nursing services must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

b. 2. Home health aide services. Home health aides must meet the qualifications specified for home health aides by 42 CFR 484.36. Home health aide services may include assisting with personal hygiene, meal preparation and feeding, walking, and taking and recording blood pressure, pulse, and respiration. Home health aide services must be provided under the general supervision of a registered nurse. A recipient may not receive duplicative home health aide and personal care aide services.

c. 3. Rehabilitation services. Services shall be specific and provide effective treatment for patients' conditions in accordance with accepted standards of medical practice. The amount, frequency, and duration of the services shall be reasonable. Rehabilitative services shall be provided with the expectation, based on the assessment made by physicians of patients' rehabilitation potential, that the condition of patients will improve significantly in a reasonable and generally predictable period of time, or

shall be necessary to the establishment of a safe and effective maintenance program required in connection with the specific diagnosis.

(1) *a.* Physical therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and is under the direct supervision of a physical therapist licensed by the Board of Medicine. When physical therapy services are provided by a qualified physical therapy assistant, such services shall be provided under the supervision of a qualified physical therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(2) *b.* Occupational therapy services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board, or an occupational therapy assistant who is certified by the American Occupational Therapy Certification Board under the direct supervision of an occupational therapist as defined above. When occupational therapy services are provided by a qualified occupational therapy assistant, such services shall be provided under the supervision of a qualified occupational therapist who makes an onsite supervisory visit at least once every 30 days. This visit shall not be reimbursable.

(3) *c.* Speech-language pathology services shall be directly and specifically related to an active written care plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology.

~~d. Durable medical equipment and supplies. Durable medical equipment, supplies, or appliances must be ordered by the physician, be related to the needs of the patient, and included on the plan of care for persons receiving home health services in addition to durable medical equipment and supplies. Treatment supplies used for treatment during the visit are included in the visit rate. Treatment supplies left in the~~

~~home to maintain treatment after the visits shall be charged separately.~~

e. 4. A visit shall be defined as the duration of time that a nurse, home health aide, or rehabilitation therapist is with a client to provide services prescribed by a physician and that are covered home health services. Visits shall not be defined in measurements or increments of time.

I. Durable medical equipment (DME) and supplies.

1. DME providers shall retain copies of the CMN and all applicable supporting documentation on file for post payment audit reviews. Durable medical equipment and supplies that are not ordered on the CMN for which reimbursement has been made by Medicaid will be retracted. Supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation does not replace the requirement for a properly completed CMN. The dates of the supporting documentation must coincide with the dates of service on the CMN and the medical practitioner providing the supporting documentation must be identified by name and title. DME providers shall not create or revise CMNs or supporting documentation for durable medical equipment and supplies provided after the post payment audit review has been initiated.

2. Persons needing only DME/supplies may obtain such services directly from the DME provider without having to consult or obtain services from a home health service or home health provider. DME/supplies must be ordered by the physician, be related to the medical treatment of the patient, and the complete order must be on the CMN for persons receiving DME/supplies. Supplies used for treatment during the visit are included in the visit rate of the home health provider. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

G. 12 VAC 30-60-80. Utilization control: optometrists' services.

Optometrists' services are limited to examinations (refractions) after preauthorization by the state agency except for eyeglasses as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT).

H. 12 VAC 30-60-90. Utilization control: special services.

In the broad category of special services which includes nonemergency transportation, all such services for recipients will require preauthorization by a local health department.

I. 12 VAC 30-60-100. Utilization control: incorporation of specialized quality standards.

Standards in other specialized high quality programs such as the program of Crippled Children's Services will be incorporated as appropriate.

J. 12 VAC 30-60-110. Utilization control: effect of geographic boundaries on provision of care.

Provisions will be made for obtaining recommended medical care and services regardless of geographic boundaries.

PART I.

12 VAC 30-60-120. Utilization control: intensive physical rehabilitative services.

~~§ 1.1.~~ A. A patient qualifies for intensive inpatient rehabilitation or comprehensive outpatient physical rehabilitation as provided in a comprehensive outpatient rehabilitation facility (CORF) if the following criteria are met:

A. 1. Adequate treatment of his medical condition requires an intensive rehabilitation program consisting of an interdisciplinary coordinated team approach to improve his ability to function as independently as possible; and

B. 2. It has been established that the rehabilitation program cannot be safely and adequately carried out in a less intense setting.

~~§ 1.2.~~ B. In addition to the disability requirement, participants shall meet the following criteria:

A. 1. Require at least two of the listed therapies in addition to rehabilitative nursing:

1. a. Occupational Therapy

2. b. Physical Therapy

3. c. Cognitive Rehabilitation

4. d. Speech/Language Pathology Services

B. 2. Medical condition stable and compatible with an active rehabilitation program.

C. 3. For continued intensive rehabilitation services, the patient must demonstrate an ability to actively participate in goal-related therapeutic interventions developed by the interdisciplinary team. This is evidenced by regular attendance in planned activities and demonstrated progress toward the established goals.

D. 4. Intensive rehabilitation services are to be considered for termination regardless of the preauthorized length of stay when any of the following conditions are met:

1. a. No further potential for improvement is demonstrated. The patient has reached his maximum progress and a safe and effective maintenance program has been developed.

2. b. There is limited motivation on the part of the individual or caregiver.

3. c. The individual has an unstable condition that affects his ability to participate in a rehabilitative plan.

4. d. Progress toward an established goal or goals cannot be achieved within a reasonable length of time.

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5. e. The established goal serves no purpose to increase meaningful function or cognitive capabilities.

6. f. The service can be provided by someone other than a skilled rehabilitation professional.

PART II.

INPATIENT ADMISSION AUTHORIZATION.

§ 2.1. C. Within 72 hours of a patient's admission to an intensive rehabilitation program, or within 72 hours of notification to the facility of the patient's Medicaid eligibility, the facility shall notify the Department of Medical Assistance Services in writing of the patient's admission. This notification shall include a description of the admitting diagnoses, plan of treatment, expected progress and a physician's certification that the patient meets the admission criteria. The Department of Medical Assistance Services will make a determination as to the appropriateness of the admission for Medicaid payment and notify the facility of its decision. If payment is approved, the department will establish and notify the facility of an approved length of stay. Additional lengths of stay shall be requested in writing and approved by the department. Admissions or lengths of stay not authorized by the Department of Medical Assistance Services will not be approved for payment.

PART III.

DOCUMENTATION REQUIREMENTS.

§ 3.1. D. Documentation of rehabilitation services shall, at a minimum:

A. 1. Describe the clinical signs and symptoms of the patient necessitating admission to the rehabilitation program;

B. 2. Describe any prior treatment and attempts to rehabilitate the patient;

C. 3. Document an accurate and complete chronological picture of the patient's clinical course and progress in treatment;

D. 4. Document that an interdisciplinary coordinated treatment plan specifically designed for the patient has been developed;

E. 5. Document in detail all treatment rendered to the patient in accordance with the interdisciplinary plan of care with specific attention to frequency, duration, modality, response to treatment, and identify who provided such treatment;

F. 6. Document change in the patient's conditions;

G. 7. Describe responses to and the outcome of treatment; and

H. 8. Describe a discharge plan which includes the anticipated improvements in functional levels, the time frames necessary to meet these goals, and the patient's discharge destination.

§ 3.2. Services not specifically documented in the patient's medical record as having been rendered will be deemed not to have been rendered and no reimbursement will be provided. All intensive rehabilitative services shall be

provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual.

PART IV.

INPATIENT REHABILITATION EVALUATION.

§ 4.1. E. For a patient with a potential for physical rehabilitation for which an outpatient assessment cannot be adequately performed, an intensive evaluation of no more than seven calendar days will be allowed. A comprehensive assessment will be made of the patient's medical condition, functional limitations, prognosis, possible need for corrective surgery, attitude toward rehabilitation, and the existence of any social problems affecting rehabilitation. After these assessments have been made, the physician, in consultation with the rehabilitation team, shall determine and justify the level of care required to achieve the stated goals.

§ 4.2. If during a previous hospital stay an individual completed a rehabilitation program for essentially the same condition for which inpatient hospital care is now being considered, reimbursement for the evaluation will not be covered unless there is a justifiable intervening circumstance which necessitates a reevaluation.

§ 4.3. Admissions for evaluation and/or training, or both, for solely vocational or educational purposes or for developmental or behavioral assessments are not covered services.

PART V.

CONTINUING EVALUATION.

§ 5.1. F. Interdisciplinary team conferences shall be held as needed but at least every two weeks to assess and document the patient's progress or problems impeding progress. The team shall assess the validity of the rehabilitation goals established at the time of the initial evaluation, determine if rehabilitation criteria continue to be met, and revise patient goals as needed. A review by the various team members of each others' notes does not constitute a team conference. Where practical, the patient or family or both shall participate in the team conferences. A summary of the conferences, noting the team members present, shall be recorded in the clinical record and reflect the reassessments of the various contributors.

§ 5.2. Rehabilitation care is to be considered for termination, regardless of the approved length of stay, when further progress toward the established rehabilitation goal is unlikely or further rehabilitation can be achieved in a less intensive setting.

§ 5.3. Utilization review shall be performed to determine if services are appropriately provided and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate and that the patient continues to meet intensive rehabilitation criteria throughout the entire program. Services not specifically documented in the patient's medical record as having been rendered shall be deemed not to have been rendered and no reimbursement shall be provided.

~~PART VI.
THERAPEUTIC FURLOUGH DAYS.~~

~~§-6.4. G. Properly documented medical reasons for furlough may be included as part of an overall rehabilitation program. Unoccupied beds (or days) resulting from an overnight therapeutic furlough will not be reimbursed by the Department of Medical Assistance Services.~~

~~PART VII.
DISCHARGE PLANNING.~~

~~§-7.4. H. Discharge planning shall be an integral part of the overall treatment plan which is developed at the time of admission to the program. The plan shall identify the anticipated improvements in functional abilities and the probable discharge destination. The patient, unless unable to do so, or the responsible party shall participate in the discharge planning. Notations concerning changes in the discharge plan shall be entered into the record at least every two weeks, as a part of the team conference.~~

~~PART VIII.
REHABILITATION SERVICES TO PATIENTS.~~

~~§-8.4. I. Rehabilitation services are medically prescribed treatment for improving or restoring functions which have been impaired by illness or injury or, where function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning. The rules pertaining to them are:~~

~~A. 1. Rehabilitative nursing requires education, training, or experience that provides special knowledge and clinical skills to diagnose nursing needs and treat individuals who have health problems characterized by alteration in cognitive and functional ability. Rehabilitative nursing are those services furnished a patient which meet all of the following conditions:~~

~~1. a. The services shall be directly and specifically related to an active written treatment plan approved by a physician after any needed consultation with a registered nurse who is experienced in rehabilitation.~~

~~2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a registered nurse or licensed professional nurse, nursing assistant, or rehabilitation technician under the direct supervision of a registered nurse who is experienced in rehabilitation.~~

~~3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.~~

~~4. d. The service shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice and include the intensity of rehabilitative~~

nursing services which can only be provided in an intensive rehabilitation setting.

~~B. 2. Physical therapy services are those services furnished a patient which meet all of the following conditions:~~

~~1. a. The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a physical therapist licensed by the Board of Medicine;~~

~~2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a physical therapist licensed by the Board of Medicine, or a physical therapy assistant who is licensed by the Board of Medicine and under the direct supervision of a qualified physical therapist licensed by the Board of Medicine;~~

~~3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and~~

~~4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.~~

~~C. 3. Occupational therapy services are those services furnished a patient which meet all of the following conditions:~~

~~1. a. The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with an occupational therapist registered and certified by the American Occupational Therapy Certification Board;~~

~~2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be performed by an occupational therapist registered and certified by the American Occupational Therapy Certification Board or an occupational therapy assistant certified by the American Occupational Therapy Certification Board under the direct supervision of a qualified occupational therapist as defined above;~~

~~3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and~~

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4. *d.* The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

D. 4. Speech-language therapy services are those services furnished a patient which meet all of the following conditions:

4. *a.* The services shall be directly and specifically related to an active written treatment plan designed by a physician after any needed consultation with a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

2. *b.* The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a speech-language pathologist licensed by the Board of Audiology and Speech-Language Pathology;

3. *c.* The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. *d.* The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

E. 5. Cognitive rehabilitation services are those services furnished a patient which meet all of the following conditions:

4. *a.* The services shall be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a clinical psychologist experienced in working with the neurologically impaired and licensed by the Board of Medicine;

2. *b.* The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature, that the services can only be rendered after a neuropsychological evaluation administered by a clinical psychologist or physician experienced in the administration of neuropsychological assessments and licensed by the Board of Medicine and in accordance with a plan of care based on the findings of the neuropsychological evaluation;

3. *c.* Cognitive rehabilitation therapy services may be provided by occupational therapists, speech-language pathologists, and psychologists who have experience in working with the neurologically impaired when provided under a plan recommended and coordinated

by a physician or clinical psychologist licensed by the Board of Medicine;

4. *d.* The cognitive rehabilitation services shall be an integrated part of the interdisciplinary patient care plan and shall relate to information processing deficits which are a consequence of and related to a neurologic event;

5. *e.* The services include activities to improve a variety of cognitive functions such as orientation, attention/concentration, reasoning, memory, discrimination and behavior; and

6. *f.* The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis.

F. 6. Psychology services are those services furnished a patient which meet all of the following conditions:

4. *a.* The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. *b.* The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified psychologist as required by state law or by a licensed clinical social worker under the direct supervision of a licensed clinical psychologist or a licensed psychologist clinical;

3. *c.* The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. *d.* The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

G. 7. Social work services are those services furnished a patient which meet all of the following conditions:

4. *a.* The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. *b.* The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services can only be performed by a qualified social worker as required by state law;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

H. 8. Recreational therapy are those services furnished a patient which meet all of the following conditions:

4. a. The services shall be directly and specifically related to an active written treatment plan ordered by a physician;

2. b. The services shall be of a level of complexity and sophistication, or the condition of the patient shall be of a nature that the services are performed as an integrated part of a comprehensive rehabilitation plan of care by a recreation therapist certified with the National Council for Therapeutic Recreation at the professional level;

3. c. The services shall be provided with the expectation, based on the assessment made by the physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and generally predictable period of time, or shall be necessary to the establishment of a safe and effective maintenance program required in connection with a specific diagnosis; and

4. d. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of practice; this includes the requirement that the amount, frequency and duration of the services shall be reasonable.

I. 9. Prosthetic/orthotic services.

4. a. Prosthetic services furnished to a patient include prosthetic devices that replace all or part of an external body member, and services necessary to design the device, including measuring, fitting, and instructing the patient in its use;

2. b. Orthotic device services furnished to a patient include orthotic devices that support or align extremities to prevent or correct deformities, or to improve functioning, and services necessary to design the device, including measuring, fitting and instructing the patient in its use; and

3. c. Maxillofacial prosthetic and related dental services are those services that are specifically related to the improvement of oral function not to include routine oral and dental care.

4. d. The services shall be directly and specifically related to an active written treatment plan approved by

a physician after consultation with a prosthetist, orthotist, or a licensed, board eligible prosthodontist, certified in Maxillofacial prosthetics.

5. e. The services shall be provided with the expectation, based on the assessment made by physician of the patient's rehabilitation potential, that the condition of the patient will improve significantly in a reasonable and predictable period of time, or shall be necessary to establish an improved functional state of maintenance.

6. f. The services shall be specific and provide effective treatment for the patient's condition in accordance with accepted standards of medical and dental practice; this includes the requirement that the amount, frequency, and duration of the services be reasonable.

PART IX. HOSPICE SERVICES.

12 VAC 30-60-130. *Hospice services.*

§-9.1. A. Admission criteria. To be eligible for hospice coverage under Medicare or Medicaid, the recipient must be "terminally ill," defined as having a life expectancy of six months or less, and elect to receive hospice services rather than active treatment for the illness. Both the attending physician (if the individual has an attending physician) and the hospice medical director must certify the life expectancy.

§-9.2. B. Utilization review. Authorization for hospice services requires an initial preauthorization by DMAS and physician certification of life expectancy. Utilization review will be conducted to determine if services were provided by the appropriate provider and to ensure that the services provided to Medicaid recipients are medically necessary and appropriate. Services not specifically documented in the patients' medical records as having been rendered shall be deemed not to have been rendered and no coverage shall be provided. All hospice services shall be provided in accordance with guidelines established in the Virginia Medicaid Hospice Manual.

§-9.3. ~~Services provided.~~ C. Hospice services are a medically directed, interdisciplinary program of palliative services for terminally ill people and their families, emphasizing pain and symptom control. The rules pertaining to them are:

1. Nursing care. Nursing care must be provided by a registered nurse or by a licensed practical nurse under the supervision of a graduate of an approved school of professional nursing and who is licensed as a registered nurse.

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

3. Physician services. Physician services must be performed by a professional who is licensed to practice, who is acting within the scope of his license, and who is a doctor of medicine or osteopathy, a doctor of dental

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surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor. The hospice medical director or the physician member of the interdisciplinary team must be a licensed doctor of medicine or osteopathy.

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

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

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

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

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

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

PART X. COMMUNITY MENTAL HEALTH SERVICES.

12 VAC 30-60-140. *Community mental health services.*

§-10.1. A. Utilization review general requirements. A. On-site utilization reviews shall be conducted, at a minimum annually at each enrolled provider, by the state Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS). During each on-site review, an appropriate sample of the provider's total Medicaid population will be selected for review. An expanded review shall be conducted if an appropriate number of exceptions or problems are identified.

B. The DMHMRSAS review shall include the following items:

1. Medical or clinical necessity of the delivered service;
2. The admission to service and level of care was appropriate;
3. The services were provided by appropriately qualified individuals as defined in the Amount, Duration, and Scope of Services found in ~~Attachment 3.1 A and B, Supplement 1 §-13d Rehabilitative Services~~ 12 VAC 30-50-220; and
4. Delivered services as documented are consistent with recipients' Individual Service Plans, invoices submitted, and specified service limitations.

§-10.2. C. Mental health services utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in ~~VR 460-03-3-1100~~ 12 VAC 30-50-100 through 12 VAC 30-50-310.

A. 1. Intensive in-home services for children and adolescents.

4. a. At admission, an appropriate assessment is made and documented that service needs can best be met through intervention provided typically but not solely in the client's residence; service shall be recommended in the Individual Service Plan (ISP) which shall be fully completed within 30 days of initiation of services.

2. b. Services shall be delivered primarily in the family's residence. Some services may be delivered while accompanying family members to community agencies or in other locations.

3. c. Services shall be used when out-of-home placement is a risk and when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the client's residence as the setting for services is more likely to be successful than a clinic.

4. d. Services are not appropriate for a family in which a child has run away or a family for which the goal is to keep the family together only until an out-of-home placement can be arranged.

5. e. Services shall also be used to facilitate the transition to home from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.

6. f. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services, with the goal of keeping the child with the family.

7. g. The provider of intensive in-home services for children and adolescents shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

8. h. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home service is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the five-hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan. Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive or nonhome based services.

9. i. The intensity of service dictates that caseload sizes should be six or fewer cases at any given time. If on review caseloads exceed this limit, the provider will be required to submit a corrective action plan designed to reduce caseload size to the required limit unless the provider can demonstrate that enough of the cases in the caseload are moving toward discharge so that the caseload standard will be met within three months by attrition. Failure to maintain required caseload sizes in two or more review periods may result in termination of the provider agreement unless the provider demonstrates the ability to attain and maintain the required caseload size.

10. j. Emergency assistance shall be available 24 hours per day, seven days a week.

B. 2. Therapeutic day treatment for children and adolescents.

4. a. Therapeutic day treatment is appropriate for children and adolescents who meet the DMHMRSAS definitions of "serious emotional disturbance" or "at risk of developing serious emotional disturbance" and who also meet one of the following:

a. (1) Children and adolescents who require year-round treatment in order to sustain behavioral or emotional gains.

b. (2) Children and adolescents whose behavior and emotional problems are so severe they cannot be handled in self-contained or resource emotionally disturbed (ED) classrooms without:

(1) (a) This programming during the school day; or

(2) (b) This programming to supplement the school day or school year.

e. (3) Children and adolescents who would otherwise be placed on homebound instruction because of severe emotional/behavior problems that interfere with learning.

d. (4) Children and adolescents who have deficits in social skills, peer relations, dealing with authority; are hyperactive; have poor impulse control; are extremely depressed or marginally connected with reality.

e. (5) Children in preschool enrichment and early intervention programs when the children's emotional/behavioral problems are so severe that they cannot function in these programs without additional services.

2. b. The provider of therapeutic day treatment for child and adolescent services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

3. c. The minimum staff-to-youth ratio shall ensure that adequate staff is available to meet the needs of the youth identified on the ISP.

4. d. The program shall operate a minimum of two hours per day and may offer flexible program hours (i.e. before or after school or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be billable. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled activities.

5. e. Time for academic instruction when no treatment activity is going on cannot be included in the billing unit.

6. f. Services shall be provided following a diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or certified psychiatric nurse and in accordance with an ISP which shall be fully completed within 30 days of initiation of the service.

G. 3. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness

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following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

1- a. The provider of day treatment/partial hospitalization shall be licensed by DMHMRSAS.

2- b. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

3- c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization. Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D- 4. Psychosocial rehabilitation services shall be provided to those individuals who have mental illness or mental retardation, and who have experienced long-term or repeated psychiatric hospitalization, or who lack daily living skills and interpersonal skills, or whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term care is needed to maintain the individual in the community.

1- a. Services shall be provided following an assessment which clearly documents the need for services and in accordance with an ISP which shall be fully completed within 30 days of service initiation.

2- b. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

3- c. The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursement unit. However, transportation time exceeding 25% of the total daily time spent in the

service for each individual shall not be covered. These restrictions apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

4- d. Time allocated for field trips may be used to calculate time and units if the goal is to provide training in an integrated setting, and to increase the client's understanding or ability to access community resources.

E- 5. Admission to crisis intervention services is indicated following a marked reduction in the individual's psychiatric, adaptive or behavioral functioning or an extreme increase in personal distress. Crisis intervention may be the initial contact with a client.

1- a. The provider of crisis intervention services shall be licensed as an Outpatient Program by DMHMRSAS.

2- b. Client-related activities provided in association with a face-to-face contact are reimbursable.

3- c. An Individual Service Plan (ISP) shall not be required for newly admitted individuals to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

4- d. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP must be developed or revised to reflect the short-term counseling goals by the fourth face-to-face contact.

5- e. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

6- f. Crisis intervention services may be provided to eligible individuals outside of the clinic and billed, provided the provision of out-of-clinic services is clinically/programmatically appropriate. When travel is required to provide out-of-clinic services, such time is reimbursable. Crisis intervention may involve the family or significant others.

F- 6. Case management.

1- a. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, significant others, service providers, and others including a minimum of one face-to-face client contact within a 90-day period. Billing can be submitted only for months in which direct or client-related contacts, activity or communications occur.

2. *b.* The Medicaid eligible individual shall meet the DMHMRSAS criteria of serious mental illness, serious emotional disturbance in children and adolescents, or youth at risk of serious emotional disturbance.

3. *c.* There shall be no maximum service limits for case management services.

4. *d.* The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager shall review the ISP every three months. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be granted up to the last day of the fourth month following the month of the last review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of actual review.

5. *e.* The ISP shall be updated at least annually.

§ 40-3. *D.* Mental retardation utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found in VR 460-03-3-1100 12 VAC 30-50-100 through 12 VAC 30-50-310.

A. 1. Appropriate use of day health and rehabilitation services requires the following conditions shall be met:

4. *a.* The service is provided by a program with an operational focus on skills development, social learning and interaction, support, and supervision.

2. *b.* The individual shall be assessed and deficits must be found in two or more of the following areas to qualify for services:

a. (1) Managing personal care needs,

b. (2) Understanding verbal commands and communicating needs and wants,

c. (3) Earning wages without intensive, frequent and ongoing supervision or support,

d. (4) Learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,

e. (5) Exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,

f. (6) Making decisions which require informed consent,

g. (7) Caring for other needs without the assistance or personnel trained to teach functional skills,

h. (8) Functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

3. *c.* Services for the individual shall be preauthorized annually by DMHMRSAS.

4. *d.* Each individual shall have a written plan of care developed by the provider which shall be fully complete within 30 days of initiation of the service, with a review of the plan of care at least every 90 days with modification as appropriate. A 10-day grace period is allowable.

5. *e.* The provider shall update the plan of care at least annually.

6. *f.* The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting plan of care goals.

7. *g.* The program shall operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the reimbursable unit. However, transportation time exceeding 25% of the total daily time spent in the service for each individual shall not be covered. These restrictions shall apply only to transportation to and from the program site. Other program-related transportation may be included in the program day as indicated by scheduled program activities.

8. *h.* The provider shall be licensed by DMHMRSAS.

B. 2. Appropriate use of case management services for persons with mental retardation requires the following conditions to be met:

4. *a.* The individual must require case management as documented on the consumer service plan of care which is developed based on appropriate assessment and supporting data. Authorization for case management services shall be obtained from DMHMRSAS Care Coordination Unit annually.

2. *b.* An active client shall be defined as an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or communication or activity with the client, family, service providers, significant others and other entities including a minimum of one face-to-face contact within a 90-day period.

3. *c.* The plan of care shall address the individual's needs in all life areas with consideration of the individual's age, primary disability, level of functioning and other relevant factors.

a. (1) The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the

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month the review was due and not the date of the actual review.

b. (2) The need for case management services shall be assessed and justified through the development of an annual consumer service plan.

4. d. The individual's record shall contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.

~~PART XI.~~

~~GENERAL OUTPATIENT PHYSICAL REHABILITATION SERVICES.~~

12 VAC 30-60-150. General outpatient physical rehabilitation services.

~~§-11.1. A. Scope.~~

A. 1. Medicaid covers general outpatient physical rehabilitative services provided in outpatient settings of acute and rehabilitation hospitals, in school divisions, by home health agencies, and by rehabilitation agencies which have a provider agreement with the Department of Medical Assistance Services (DMAS).

B. 2. Outpatient rehabilitative services shall be prescribed by a physician and be part of a written plan of care.

C. 3. Outpatient rehabilitative services shall be provided in accordance with guidelines found in the Virginia Medicaid Rehabilitation Manual, with the exception of such services provided in school divisions which shall be provided in accordance with guidelines found in the Virginia Medicaid School Division Manual. Utilization review shall include determinations that providers meet all the requirements of Virginia state regulations found in ~~VR 460-04 3-1300~~ (*12 VAC 30-130-10 through 12 VAC 30-130-80*). Utilization review shall be performed to ensure that services are appropriately provided and that services provided to Medicaid recipients are medically necessary and appropriate.

~~§-11.2. B. Covered outpatient rehabilitative services.~~

A. 1. Covered outpatient rehabilitative services for acute conditions shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service. Such services may be provided by outpatient settings of hospitals, rehabilitation agencies, and home health agencies.

B. 2. Covered outpatient rehabilitative services for long-term, chronic conditions shall include physical therapy, occupational therapy, and speech-language pathology services. Any one of these services may be offered as the sole rehabilitative service and shall not be contingent upon the provision of another service. Such services may be provided by outpatient settings of acute and rehabilitation hospitals, rehabilitation agencies, and school divisions.

~~§-11.3. C. Eligibility criteria for outpatient rehabilitative services. To be eligible for general outpatient rehabilitative services, the patient must require at least one of the following services: physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy. All rehabilitative services must be prescribed by a physician.~~

~~§-11.4. D. Criteria for the provision of outpatient rehabilitative services. All practitioners and providers of services shall be required to meet state and federal licensing and/or certification requirements. 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.~~

~~PART XII.~~

~~UTILIZATION REVIEW OF CASE MANAGEMENT FOR RECIPIENTS OF AUXILIARY GRANTS.~~

12 VAC 30-60-160. Utilization review of case management for recipients of auxiliary grants.

~~§-12.1. A. Criteria of need for case management services. It shall be the responsibility of the assessor who identifies the individual's need for residential or assisted living in an adult care residence to assess the need for case management services. The case manager shall, at a minimum, update the assessment and make any necessary referrals for service as part of the case management annual visit. Case management services may be initiated at any time during the year that a need is identified.~~

~~§-12.2. B. Coverage limits. DMAS shall reimburse for one case management visit per year for every individual who receives an auxiliary grant. For individuals meeting the following ongoing case management criteria, DMAS shall reimburse for one case management visit per calendar quarter:~~

1. The individual needs the coordination of multiple services and the individual does not currently have support available that is willing to assist in the coordination of and access to services, and a referral to a formal or informal support system will not meet the individual's needs; or

2. The individual has an identified need in his physical environment, support system, financial resources, emotional or physical health which must be addressed to ensure the individual's health and welfare and other formal or informal supports have either been unsuccessful in their efforts or are unavailable to assist the individual in resolving the need.

~~§-12.3. C. Documentation requirements.~~

A. 1. The update to the assessment shall be required annually regardless of whether the individual is authorized for ongoing case management.

B. 2. A care plan and documentation of contacts must be maintained by the case manager for persons authorized for ongoing case management.

4. a. The care plan must be a standardized written description of the needs which cannot be met by the adult care residence and the resident-specific goals,

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objectives and time frames for completion. This care plan must be updated annually at the time of reassessment, including signature by both the resident and case manager.

2. b. The case manager shall provide ongoing monitoring and arrangement of services according to the care plan and must maintain documentation recording all contacts made with or on behalf of the resident.

DOCUMENTS INCORPORATED BY REFERENCE

Virginia Medicaid Nursing Home Manual, Department of Medical Assistance Services.
 Virginia Medicaid Rehabilitation Manual, Department of Medical Assistance Services.

**VIRGINIA DEPARTMENT OF MEDICAL ASSISTANCE SERVICES
 CERTIFICATE OF MEDICAL NECESSITY
 DURABLE MEDICAL EQUIPMENT AND SUPPLIES**



SECTION I	RECIPIENT DATA	SERVICING PROVIDER	CMN STATUS
	I.D. # _____	I.D. # _____	<input type="checkbox"/> INITIAL <input type="checkbox"/> REVISED <input type="checkbox"/> RENEWED
	Name _____	Name _____	
	D.O.B. _____	Contact Person _____	
	Phone # () _____	Phone # () _____	

SECTION II			RECIPIENT INFORMATION
Answer all questions that are applicable to DME service being requested. If answer is yes, you must describe/attach additional information.			DESCRIPTION/ADDITIONAL INFORMATION: (Additional space on reverse)
Does patient:	YES	NO	
1. have impaired mobility?	<input type="checkbox"/>	<input type="checkbox"/>	
2. have impaired endurance?	<input type="checkbox"/>	<input type="checkbox"/>	
3. have restricted activity?	<input type="checkbox"/>	<input type="checkbox"/>	
4. have skin breakdown? (Describe site, size, depth and drainage)	<input type="checkbox"/>	<input type="checkbox"/>	
5. have impaired respiration? (Identify most recent PO ₂ _____ / Saturation level _____ for patients on oxygen)	<input type="checkbox"/>	<input type="checkbox"/>	
6. require assistance with ADL's?	<input type="checkbox"/>	<input type="checkbox"/>	
7. have impaired speech?	<input type="checkbox"/>	<input type="checkbox"/>	
8. require nutritional supplements? (Identify complete diet order)	<input type="checkbox"/>	<input type="checkbox"/>	

IS THE ITEM SUITABLE FOR USE IN HOME, AND DOES THE PATIENT/CAREGIVER DEMONSTRATE WILLINGNESS/ABILITY TO USE THE EQUIPMENT? YES ___ NO ___
 DATE PATIENT LAST EXAMINED BY PHYSICIAN _____

ICD9 Code	Clinical Diagnoses	Date of Onset	
		Less than 6 months	Greater than 6 months

SECTION III (ADDITIONAL SPACE ON REVERSE)

Begin Service Date	HCPCS Code	Item Ordered Description	Length of Time Needed	Quantity Ordered/ x1 Month	Quantity/Frequency of Use Justification/Comments

SECTION IV PHYSICIAN CERTIFICATION (MUST BE SIGNED AND DATED BY PHYSICIAN)
 I CERTIFY THAT THE ORDERED DME AND SUPPLIES ARE PART OF MY TREATMENT PLAN AND, IN MY OPINION, ARE MEDICALLY NECESSARY.

ORDERING PHYSICIAN'S NAME (print) _____ PHYSICIAN'S SIGNATURE _____ DATE _____ I.D.# _____ PHONE # _____

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RECIPIENT NAME _____	VMAP # _____
SERVICING PROVIDER NAME _____	PROVIDER ID# _____

DESCRIPTION/ADDITIONAL INFORMATION

SECTION II (continued)

SECTION III (continued)

Begin Service Date	HCPCS Code	Item Ordered Description	Length of Time Needed	Quantity Ordered/ x1 Month	Quantity/Frequency of Use Justification/Comments

SECTION IV PHYSICIAN CERTIFICATION (MUST BE SIGNED AND DATED BY PHYSICIAN)

I CERTIFY THAT THE ORDERED DME AND SUPPLIES ARE PART OF MY TREATMENT PLAN AND, IN MY OPINION, ARE MEDICALLY NECESSARY.

ORDERING PHYSICIAN'S NAME (print) _____	PHYSICIAN'S SIGNATURE _____	DATE _____	I.D.# _____	PHONE # _____
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- Section I RECIPIENT DATA**
- Complete 12-digit recipient identification number
 - Complete recipient full name (last name, first name)
 - Complete full date of birth (month, day, year)
 - Telephone # (include area code)
- SERVICING PROVIDER**
- Complete provider number (7-digits)
 - Complete provider name
 - Complete contact identifying person to call if DMAS has questions
- CMN STATUS**
- Check appropriate box
- Section II RECIPIENT INFORMATION**
- Check ALL boxes that apply
 - Identify functional limitations related to recipient and need for DME service
 - If requesting oxygen, the results of PO₂/Saturation levels must be identified
 - Date last examined by physician
 - ICD9 Code (optional)
 - Clinical diagnoses - narrative must be identified. Diagnosis must be related to the item being requested
 - Check appropriate line for date of on-set

- Section III**
- Begin service date (month, day and year)
 - Item ordered description: must be narrative description of item ordered (DME vendor may identify by HCPCS Code)
 - Length of Time Needed: length of time item will be needed for all durable equipment
 - Quantity ordered: identify quantity ordered; for expendable supplies, designate supplies needed for 1 month; if items are required greater than 1 month, note time frame in the Length of Time Needed column
 - Quantity/Frequency of Use, Justification/Comments: physician's order for frequency of use must be identified
- Section IV PHYSICIAN CERTIFICATION**
- Physician full name (print)
 - Must be signed and fully dated by physician (NOTE: Attached physician prescription will not be accepted in lieu of physician signature/date on this form); IF ORDERS FOR DME SERVICE ARE WRITTEN ON BOTH SIDES OF FORM, PHYSICIAN **MUST** SIGN/DATE BOTH SIDES OF FORM
 - Complete physician Medicaid provider number (optional)
 - Telephone number (include area code)

NUTRITIONAL STATUS EVALUATION FORM

(This form is required for the provision of enteral nutrition. Instructions for completion of this form are on the reverse side of this side.)

A. PATIENT INFORMATION

Name: _____ Date of Birth: _____
 Social Security Number: _____ Medicaid Number: _____

B. DATA ELEMENTS

Height: Please complete either a. or b. below.

a.	Height in inches	b.	Length in inches
----	------------------	----	------------------

Weight: Please complete a., b., and c. below.

a.	Current weight in pounds OR		
mid-arm circumference	Mid-arm circumference (in centimeters) and triceps skinfold thickness (in millimeters). These measurements are to be used for patients who cannot be feasibly weighed. If known, add measurement for mid-arm muscle circumference (in centimeters): _____		
triceps skinfold			
b.	Ideal body weight	c.	Previous or initial weight (if available)

Formula Tolerance: Please check all that apply to the current condition of the patient.

a.	Hydrated?	e.	Increased gastric residuals?
b.	Nausea?	f.	Constipation?
c.	Vomiting?	g.	Diarrhea?
d.	Gastric reflux?	h.	Not currently receiving a formula

Tube or Stoma Site Assessment: Please check all that apply.

a.	Gastrostomy tube?	e.	Stoma site red or irritated?
b.	Nasogastric tube?	f.	Tube flushes easily?
c.	Other tube?	g.	Fibrous tissue growth?
d.	Leakage present?	h.	Patient complaints?

Date of last tube change: _____

C. THIS NUTRITIONAL SUPPLEMENT IS THE _____ SOLE OR _____ PRIMARY SOURCE OF NUTRITION FOR THIS PATIENT. (Please check one.)

D. PROGRESS STATEMENT: Based on this evaluation and the plan of care, the patient is: (circle one)
 1. Stable 2. Progressing toward goal 3. In need of further evaluation

E. COMMENTS

F. PHYSICIAN'S ORDER FOR NUTRITIONAL SUPPLEMENT: Order must include all of the following information:

category or specific supplement ordered _____ route of administration _____
 caloric order per day _____ calories per can /pkg _____

G. ASSESSOR INFORMATION:

Name _____ Title _____ Date _____
 DMAS-115 revised 5/19/93

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Title of Regulation: State Plan for Medical Assistance Relating to Legal Fees for Nursing Facility Appeals. VR 460-03-4.1940:1 [12 VAC 30-90-20 through 12 VAC 30-90-260]. Part II, Nursing Home Payment System.

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

Public Hearing Date: N/A -- Written comments may be submitted through February 23, 1996.

(See Calendar of Events section for additional information)

Basis and Authority: Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review. The Governor approved, on June 5, 1995, the agency's adoption of the preceding emergency regulation. The department adopted its emergency regulation in response to the 1995 General Assembly's mandate contained in the Acts of the Assembly Chapter 853 Item 396(E)(9).

Subsequent to an emergency adoption action, the agency is initiating the public notice and comment process as contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1995. The Code, at § 9-6.14:4.1 C requires the agency to publish the Notice of Intended Regulatory Action within 60 days and the proposed regulation within 180 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on August 21, 1995. This proposed regulation publication date is December 25, 1995.

The Code of Federal Regulations at Part 447 sets out the requirements for the reimbursement of all covered services. Title 42 of the Code § 447.253(e) requires the provision of an appeals mechanism for providers on issues related to their reimbursement.

Purpose: The purpose of this proposal is to promulgate permanent regulations to supersede the existing emergency regulation providing for the same policy. The emergency regulation was developed in response to a mandate from the General Assembly in the 1995 Appropriations Act § 396(E)(9).

Summary and Analysis: The section of the State Plan affected by this action is the Nursing Home Payment System, Supplement to Attachment 4.19-D (VR 460-03-4.1940:1).

The Social Security Act § 1902(a)(13)(A) requires that the State Plan provide for payment for long-term care facility services through the use of rates that the state finds, and makes assurances satisfactory to the Secretary of the U.S. Department of Health and Human Services, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with state and federal laws,

regulations, and quality and safety standards. In order to secure approval from the Health Care Financing Administration (HCFA) of the State Plan (42 CFR 447.253(a)), DMAS must make assurances satisfactory to HCFA that the requirements set forth in paragraphs 42 CFR 447.253 (b) through (i) are being met. At 42 CFR 447.253(e), DMAS is required to provide an appeals or exception procedure that allows individual providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the agency determines appropriate. DMAS complies with this requirement for long-term care providers in Part III of the Nursing Home Payment System.

Nursing facilities have the right to appeal cost adjustments made by DMAS as a result of an audit of a facility's filed cost reports (42 CFR 447.253(g)). The department currently reimburses nursing facilities for legal fees relating to administrative appeals. In order to be reimbursed, the legal fees must be reasonable, necessary, related to patient care, and within the applicable peer group ceiling for the Nursing Facility (NF) claiming the fees. The legal fees are reimbursed without regard to the success or failure of the administrative appeal. The department accepts all appeals because the Code of Federal Regulations, the Administrative Process Act, and the Virginia State Plan for Medical Assistance (Attachment 4.19D: the Nursing Home Payment System) do not afford it the latitude to consider some appeals while rejecting others. The absence of financial risk to the NF encourages the indiscriminate filing of appeals, increasing health care costs and the costs of the Commonwealth in defending these appeals.

In 1990, DMAS adopted regulations related to frivolous litigation in response to congressional changes to the Social Security Act § 1903(i). Section 4801(e) of OBRA 90 denied Federal Financial Participation (FFP) to states reimbursing NFs for legal expenses associated with any frivolous litigation initiated by the facility and dismissed on the basis that no reasonable legal ground existed for the institution of such action. For a court to take such a dismissal action, the litigation must be determined to have been frivolous, and completely lacking in legal argument and legal basis. The referenced 1990 regulations do not address the issues addressed by the previous emergency regulation and this proposed regulation.

In the Appropriations Act, the 1995 General Assembly required the department to adopt regulations eliminating the reimbursement of legal fees when the NF has not substantially prevailed on the merit of the appeal. DMAS is, therefore, proposing the addition of 12 VAC 30-90-135 to Part III of the Nursing Home Payment System.

This new section provides that the department shall only reimburse NFs for legal fees related to informal and formal administrative appeals on which the NF has substantially prevailed on the merit. The term "substantially prevails" is defined as success on more than 50% of the issues appealed and on more than 50% of the amount under appeal in order to obtain reimbursement.

The reimbursement of legal fees remains subject to all other provisions of the State Plan. The legal fees claimed by the

NF must be supported by adequate, detailed, and verifiable documentation.

This eliminates the incentive to indiscriminately file appeals and add to appeals issues that are not substantive. The advantage to the public's welfare is that this regulation will permit the reimbursement of legal fees that are fair and equitable but will discourage the filing of appeals that are not reasonable. This action will free up health care dollars for expenditure on services related to patient care. The regulation will not have an impact on the delivery of services.

Issues: The primary advantage to the public for this regulation is the improved efficiency in the handling and resolution of nursing facility providers' appeals. This policy is intended to discourage providers from appealing every minute cost adjustment made by the agency to their cost reports. Such adjustments can directly affect the new per diem rate which DMAS derives from such cost report adjustments. This regulation is intended to encourage providers to pursue only those significant issues which have a high dollar value. NF providers and their legal counsel may object to this permanent regulation if they have followed the practice of appealing every adjustment the agency makes in every cost report. This consumes enormous amounts of agency resources and significantly slows down the entire NF provider appeal process. This action has no impact for recipients as the provider appeal process does not affect them. The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: This regulation potentially affects all 270 nursing facilities that are enrolled as providers with DMAS. NFs determine for themselves whether or not to initiate an appeal of the department's audit and adjustment of the submitted cost reports. DMAS receives approximately 60 appeals per year and approximately 90% of these initiated appeals are ruled in favor of the Commonwealth. DMAS has experienced an increase of appeals since 1990 with providers appealing numerous issues of small dollar-value and issues where the possibility of success is questionable. These actions are the result of NF providers determining that there is no harm in appealing since the department bears the financial burdens. There are no localities which are uniquely affected by these regulations as they apply statewide.

The 1995 Appropriations Act required these regulations be adopted and reduced DMAS' FY '96 appropriations by (\$200,000 GF) and (\$200,000 NGF) to reflect the savings incurred. Similar savings will continue in years beyond FY '96.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected number of persons and employment positions to be affected; and the projected costs

to affected businesses or entities to implement or comply with the regulation. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Nursing facilities have the right to appeal cost adjustments made by DMAS as a result of an audit of a facility's filed cost reports. DMAS currently reimburses the nursing facility for legal fees relating to such appeals if the fees are reasonable, necessary, related to patient care, and if the appeal was not dismissed on the basis of no legal grounds for the action. In the 1995 Appropriation Act the General Assembly required DMAS to further restrict such reimbursements to only those appeals where the nursing facility substantially prevails on the merits. Substantially prevailing on the merits is defined as success on more than 50% of the issues appealed and more than 50% of the amount under appeal. The proposed regulation provides for this change.

Estimated Economic Impact

The primary economic impact of the proposed regulation is a likely reduction in the costs associated with frivolous and unnecessary litigation. Of the appeals for relief from DMAS cost adjustments initiated each year by nursing facilities, roughly 90% are adjudicated in favor of the Commonwealth. This large number of unsuccessful legal actions could be taken as evidence that nursing facilities are willing to initiate questionable litigation because, in the current environment, they bear none of the costs of such litigation while still reaping any of the benefits. Removing this perverse incentive by causing nursing facilities to bear their own legal costs when they initiate unsuccessful, and presumably unnecessary, appeals will likely reduce, and in some cases preclude, the incidence of frivolous litigation.

DPB's estimate of the likely reduction in legal costs associated with the proposed regulation is roughly \$380,000 per year. This estimate is based on the following assumptions:

Of the approximately 50 informal appeals filed each year, 45, or 90%, would no longer qualify for reimbursement of legal fees.

The average reimbursable legal expense associated with informal appeals is \$3,500.

Of the approximately seven formal appeals filed each year, 6.3, or 90%, would no longer qualify for reimbursement of legal fees.

The average reimbursable legal expense associated with formal appeals is \$35,000.

The regulation is anticipated to have no other significant economic impacts.

Projected Number of Businesses or Other Entities to Whom the Regulation will Apply

The proposed regulation potentially affects all 270 nursing facilities currently enrolled with DMAS as providers.

Localities and Types of Businesses Particularly Affected

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No localities are particularly affected by this proposed regulation. The proposed regulation does particularly affect nursing care facilities.

Projected Number of Persons and Employment Positions Affected

The regulation is not anticipated to have a measurable effect on employment.

Projected Costs to Affected Businesses or Entities

If the proposed regulation has no effect on the current pattern of litigation involving cost adjustment appeals, the cost to affected businesses could be as high as the \$400,000 reduction in legal costs anticipated by DMAS. To the extent however, that the proposed regulation induces nursing facilities to make more accurate assessments of the likely costs and benefits associated with initiating such appeals, costs could be substantially lower than \$400,000.

Agency Response to Economic Impact Analysis:

The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Legal Fees for Nursing Facility Appeals.

Summary:

The purpose of this proposal is to promulgate permanent regulations providing for compliance with a mandate from the General Assembly in the 1995 Appropriation Act, § 396(E)(9), relating to reimbursement of nursing facilities for legal fees incurred while appealing cost adjustments made by DMAS as a result of an audit of a facility's filed cost report. Currently, DMAS reimburses for these legal fees if the fees are reasonable, necessary, related to patient care, and if the appeal was not dismissed on the basis of no legal grounds for the act. The 1995 appropriation amendment requires DMAS to restrict these reimbursements to only the appeals in which the nursing facility substantially prevails on the merits, i.e., the facility is successful on more than 50% of the issues appealed and more than 50% of the amount under appeal.

12 VAC 30-90-20 through 12 VAC 30-90-260). Part II, Nursing Home Payment System.

PART I. INTRODUCTION.

PART II. NURSING HOME PAYMENT SYSTEM.

Subpart I. General.

§ 1.1. General. 12 VAC 30-90-20. Nursing home payment system; generally.

A. Effective October 1, 1990, the payment methodology for Nursing Facility (NF) reimbursement by the Virginia Department of Medical Assistance Services (DMAS) is set forth in the following document *this part*. The formula provides for incentive payments to efficiently operated NFs

and contains payment limitations for those NFs operating less efficiently. A cost efficiency incentive encourages cost containment by allowing the provider to retain a percentage of the difference between the prospectively determined operating cost rate and the ceiling.

§ 1.2. Cost components.

B. Three separate cost components are used: plant cost, operating cost and nurse aide training and competency evaluation program and competency evaluation program (NATCEPs) costs. The rates, which are determined on a facility-by-facility basis, shall be based on annual cost reports filed by each provider.

§ 1.3. Ceiling limitations.

C. In determining the ceiling limitations, there shall be direct patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA Metropolitan Statistical Area (MSA), the Richmond-Petersburg Metropolitan Statistical Area (MSA), and in the rest of the state. There shall be indirect patient care medians established for NFs in the Virginia portion of the Washington DC-MD-VA MSA, and in the rest of the state. The Washington DC-MD-VA MSA and the Richmond-Petersburg MSA shall include those cities and counties as listed and changed from time to time by the Health Care Financing Administration (HCFA). A NF located in a jurisdiction which HCFA adds to or removes from the Washington DC-MD-VA MSA or the Richmond-Petersburg MSA shall be placed in its new peer group, for purposes of reimbursement, at the beginning of its next fiscal year following the effective date of HCFA's final rule.

§ 1.4. Exemptions.

D. Institutions for mental diseases providing nursing services for individuals age 65 and older shall be exempt from the prospective payment system as defined in §§ 2.6, 2.7, 2.8, 2.19, and 2.25, 12 VAC 30-90-40, 12 VAC 30-90-60, and 12 VAC 30-90-80, as are mental retardation facilities. All other sections of this payment system relating to reimbursable cost limitations shall apply. These facilities shall continue to be reimbursed retrospectively on the basis of reasonable costs in accordance with Medicare and Medicaid principles of reimbursement. Reimbursement to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) shall be limited to the highest rate paid to a state ICF/MR institution, approved each July 1 by DMAS.

§ 1.5. Medicare principles of reimbursement.

E. Except as specifically modified herein, Medicare principles of reimbursement, as amended from time to time, shall be used to establish the allowable costs in the rate calculations. Allowable costs must be classified in accordance with the DMAS uniform chart of accounts (see VR-460-03-4.1941, Uniform Expense Classification 12 VAC 30-90-270) and must be identifiable and verified by contemporaneous documentation.

All matters of reimbursement which are part of the DMAS reimbursement system shall supersede Medicare principles of reimbursement. Wherever the DMAS reimbursement system conflicts with Medicare principles of reimbursement,

the DMAS reimbursement system shall take precedence. Appendices are a part of the DMAS reimbursement system.

PART II. Subpart II.
Rate Determination Procedures

Article 1.
Plant Cost Component.

§-2.1. 12 VAC 30-90-30. Plant cost.

A. Plant cost shall include actual allowable depreciation, interest, rent or lease payments for buildings and equipment as well as property insurance, property taxes and debt financing costs allowable under Medicare principles of reimbursement or as defined herein.

B. To calculate the reimbursement rate, plant cost shall be converted to a per diem amount by dividing it by the greater of actual patient days or the number of patient days computed as 95% of the daily licensed bed complement during the applicable cost reporting period.

C. For NFs of 30 beds or less, to calculate the reimbursement rate, the number of patient days will be computed as not less than 85% of the daily licensed bed complement.

D. Costs related to equipment and portions of a building/facility not available for patient care related activities are nonreimbursable plant costs.

§-2.2. 12 VAC 30-90-31. New nursing facilities and bed additions.

A. 1. Providers shall be required to obtain three competitive bids when (i) constructing a new physical plant or renovating a section of the plant when changing the licensed bed capacity, and (ii) purchasing fixed equipment or major movable equipment related to such projects.

2. All bids must be obtained in an open competitive market manner, and subject to disclosure to DMAS prior to initial rate setting. (Related parties see §-2.10 12 VAC 30-90-51.)

B. Reimbursable costs for building and fixed equipment shall be based upon the 3/4 (25% of the surveyed projects with costs above the median, 75% with costs below the median) square foot costs for NFs published annually in the R.S. Means Building Construction Cost Data as adjusted by the appropriate R.S. Means Square Foot Costs "Location Factor" for Virginia for the locality in which the NF is located. Where the specific location is not listed in the R.S. Means Square Foot Costs "Location Factor" for Virginia, the facility's zip code shall be used to determine the appropriate locality factor from the U.S. Postal Services National Five Digit Zip Code for Virginia and the R.S. Means Square Foot Costs "Location Factors." The provider shall have the option of selecting the construction cost limit which is effective on the date the Certificate of Public Need (COPN) is issued or the date the NF is licensed. Total cost shall be calculated by multiplying the above 3/4 square foot cost by 385 square feet (the average per bed square footage). Total costs for building additions shall be calculated by multiplying the square footage of the project by the applicable components of the construction cost in the R.S. Means Square Foot Costs, not to exceed the total per bed cost for a new NF.

Reasonable limits for renovations shall be determined by the appropriate costs in the R.S. Means Repair and Remodeling Cost Data, not to exceed the total R.S. Means Building Construction Cost Data 3/4 square foot costs for nursing homes.

C. New NFs and bed additions to existing NFs must have prior approval under the state's Certificate of Public Need Law and Licensure regulations in order to receive Medicaid reimbursement.

D. However in no case shall allowable reimbursed costs exceed 110% of the amounts approved in the original COPN, or 100% of the amounts approved in the original COPN as modified by any "significant change" COPN, where a provider has satisfied the requirements of the State Department of Health with respect to obtaining prior written approval for a "significant change" to a COPN which has previously been issued (see 12 VAC 5-220-10 et seq.).

§-2.3. 12 VAC 30-90-32. Major capital expenditures.

A. Major capital expenditures include, but are not limited to, major renovations (without bed increase), additions, modernization, other renovations, upgrading to new standards, and equipment purchases. Major capital expenditures shall be any capital expenditures costing \$100,000 or more each, in aggregate for like items, or in aggregate for a particular project. These include purchases of similar type equipment or like items within a one calendar year period (not necessarily the provider's reporting period).

B. Providers (including related organizations as defined in §-2.40 12 VAC 30-90-51) shall be required to obtain three competitive bids and if applicable, a Certificate of Public Need before initiating any major capital expenditures. All bids must be obtained in an open competitive manner, and subject to disclosure to the DMAS prior to initial rate setting. (Related parties see §-2.10 12 VAC 30-90-51.)

C. Useful life shall be determined by the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets (AHA). If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

D. Major capital additions, modernization, renovations, and costs associated with upgrading the NF to new standards shall be subject to cost limitations based upon the applicable components of the construction cost limits determined in accordance with §-2.2-B 12 VAC 30-90-31 B.

§-2.4. 12 VAC 30-90-33. Financing.

A. The DMAS shall continue its policy to disallow cost increases due to the refinancing of a mortgage debt, except when required by the mortgage holder to finance expansions or renovations. Refinancing shall also be permitted in cases where refinancing would produce a lower interest rate and result in a cost savings. The total net aggregate allowable costs incurred for all cost reporting periods related to the refinancing cannot exceed the total net aggregate costs that would have been allowable had the refinancing not occurred.

1. Refinancing incentive. Effective July 1, 1991, for mortgages refinanced on or after that date, the DMAS will pay a refinancing incentive to encourage nursing

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facilities to refinance fixed-rate, fixed-term mortgage debt when such arrangements would benefit both the Commonwealth and the providers. The refinancing incentive payments will be made for the 10-year period following an allowable refinancing action, or through the end of the refinancing period should the loan be less than 10 years, subject to a savings being realized by application of the refinancing calculation for each of these years. The refinancing incentive payment shall be computed on the net savings from such refinancing applicable to each provider cost reporting period. Interest expense and amortization of loan costs on mortgage debt applicable to the cost report period for mortgage debt which is refinanced shall be compared to the interest expense and amortization of loan costs on the new mortgage debt for the cost reporting period.

2. Calculation of refinancing incentive. The incentive shall be computed by calculating two index numbers, the old debt financing index and the new debt financing index. The old debt financing index shall be computed by multiplying the term (months) which would have been remaining on the old debt at the end of the provider's cost report period by the interest rate for the old debt. The new debt index shall be computed by multiplying the remaining term (months) of the new debt at the end of the cost reporting period by the new interest rate. The new debt index shall be divided by the old debt index to achieve a savings ratio for the period. The savings ratio shall be subtracted from a factor of 1 to determine the refinancing incentive factor.

3. Calculation of net savings. The gross savings for the period shall be computed by subtracting the allowable new debt interest for the period from the allowable old debt interest for the period. The net savings for the period shall be computed by subtracting allowable new loan costs for the period from allowable gross savings applicable to the period. Any remaining unamortized old loan costs may be recovered in full to the extent of net savings produced for the period.

4. Calculation of incentive amount. The net savings for the period, after deduction of any unamortized old loan and debt cancellation costs, shall be multiplied by the refinancing incentive factor to determine the refinancing incentive amount. The result shall be the incentive payment for the cost reporting period, which shall be included in the cost report settlement, subject to per diem computations under ~~§ 2.1 B, 2.1 C, and 2.14 A~~ 12 VAC 30-90-30 B and C, and 12 VAC 30-90-55 A.

5. Where a savings is produced by a provider refinancing his old mortgage for a longer time period, the DMAS shall calculate the refinancing incentive and payment in accordance with ~~§§ 2.4 subdivisions A 1 through 2.4 A 4~~ of this section for the incentive period. Should the calculation produce both positive and negative incentives, the provider's total incentive payments shall not exceed any net positive amount for the entire incentive period. Where a savings is produced by refinancing with either a principal balloon payment at the end of the refinancing period, or a variable interest rate, no incentive payment will be made, since the true

savings to the Commonwealth cannot be accurately computed.

6. All refinancings must be supported by adequate and verifiable documentation and allowable under DMAS regulations to receive the refinancing savings incentive.

7. Balloon loan reimbursement. This subdivision applies to the construction and acquisition of nursing facilities (as defined in ~~§§ 2.2 and 2.5~~ 12 VAC 30-90-31 and 12 VAC 30-90-34) and major capital expenditures (as defined in ~~§ 2.3~~ 12 VAC 30-90-32) that are financed with balloon loans. A balloon loan requires periodic payments to be made that do not fully amortize the principal balance over the term of the loan; the remaining balance must be repaid at the end of a specified time period. Demand notes and loans with call provisions shall not be deemed to be balloon loans.

a. Incurred interest. Reimbursement for interest of a balloon loan and subsequent refinancings shall be considered a variable interest rate loan under ~~§ 2.4 B subsection B~~ of this section.

(1) A standard amortization period of 27 years, from the inception date of the original balloon loan, must be computed by the provider and submitted to DMAS and used as the amortization period for loans for renovation, construction, or purchase of a nursing facility.

(2) A standard amortization period of 15 years, from the inception of the original balloon loan, must be used as the amortization period for loans on furniture, fixtures, and equipment.

(3) A loan which is used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for the purpose of determining the amortization period.

b. The allowable interest rate shall be limited to the interest rate upper limit in effect on the date of the original balloon loan, unless another rate is allowable under ~~§ 2.4 B subsection B~~ of this section.

c. Financing costs. The limitations on financing costs set forth in ~~§ 2.4 B subsection B~~ of this section shall apply to balloon loans. Financing costs exceeding the limitations set forth in these sections shall be allowed to the extent that such excess financing costs may be offset by any available interest savings.

(1) A 27-year amortization period must be used for deferred financing costs associated with the construction or purchase of a nursing facility.

(2) A 15-year amortization period must be used for deferred financing costs associated with financing of furniture, fixtures, and movable equipment.

(3) Financing costs associated with a loan used partially for the acquisition of buildings, land, and land improvements and partially for the purchase of furniture, fixtures, and equipment must be prorated for determination of the amortization period.

d. Cumulative credit computation. The computation of allowable interest and financing costs for balloon loans shall be calculated using the following procedures:

(1) A standard amortization schedule of allowable costs based upon the upper limits for interest and financing costs shall be computed by the provider and submitted to DMAS for the applicable 27-year or 15-year periods on the original balloon loan.

(2) For each cost reporting period, the provider shall be allowed the lesser of loan costs (interest and financing costs) computed in accordance with subdivision 7 a of this subsection, or the actual loan costs incurred during the period.

(3) To the extent that there is a "credit" created by the actual loan costs being less than the loan costs computed on the amortization schedule in some periods, the provider may recover any otherwise allowable costs which result from the refinancing, extension, or renewal of the balloon loan, and any loan costs which have been disallowed because the loan costs are over the limitation for some periods. However, the cumulative actual loan cost reimbursement may not exceed the cumulative allowable loan cost as computed on the amortization schedule to that date.

(4) In refinancing or refinancings of the original balloon loan which involve additional borrowings in excess of the balance due on the original balloon loan, the excess over the balance due on the balloon loan shall be treated as new debt subject to the DMAS financing policies and regulations. Any interest and financing costs incurred on the refinancing shall be allocated pro rata between the refinancing of the balloon loan and the new debt.

(5) In the event of a sale of the facility, any unused balance of cumulative credit or cumulative provider excess costs would follow the balloon loan or the refinancing of the balloon loan if the balloon loan or its refinancing is paid by the buyer under the same terms as previously paid by the seller. Examples of this are (i) the buyer assumes the existing instrument containing the same rates and terms by the purchaser; or (ii) the balance of the balloon loan or its refinancings is financed by the seller to the buyer under the same rates and terms of the existing loan as part of the sale of the facility. If the loan is otherwise paid in full at any time and the facility is sold before the full 27-year or 15-year amortization period has expired, the balance of unused cumulative credit or cumulative provider excess costs shall expire and not be considered an allowable cost.

e. In accordance with § 2.4 A (5) subdivision A 5 of this section, no refinancing incentive shall be available for refinancings, extensions, or renewals of balloon loans.

f. The balloon loan and refinancing of the balloon loan shall be subject to all requirements for allowable

borrowing, except as otherwise provided by this subsection.

B. Interest rate upper limit. Financing for all NFs and expansions which require a COPN and all renovations and purchases shall be subject to the following limitations:

1. Interest expenses for debt financing which is exempt from federal income taxes shall be limited to:

The average weekly rates for Baa municipal rated bonds as published in Cragie Incorporated Municipal Finance Newsletter as published weekly (Representative reoffering from general obligation bonds), plus one percentage point (100 basis points), during the week in which commitment for construction financing or closing for permanent financing takes place.

2. a. Effective on and after July 1, 1990, the interest rate upper limit for debt financing by NFs that are subject to prospective reimbursement shall be the average of the rate for 10-year and 30-year U.S. Treasury Constant Maturities, as published in the weekly Federal Reserve Statistical Release (H.15), plus two percentage points (200 basis points).

This limit (i) shall apply only to debt financing which is not exempt from federal income tax, and (ii) shall not be available to NF's which are eligible for such tax exempt financing unless and until a NF has demonstrated to the DMAS that the NF failed, in a good faith effort, to obtain any available debt financing which is exempt from federal income tax. For construction financing, the limit shall be determined as of the date on which commitment takes place. For permanent financing, the limit shall be determined as of the date of closing. The limit shall apply to allowable interest expenses during the term of the financing.

b. The new interest rate upper limit shall also apply, effective July 1, 1990, to construction financing committed to or permanent financing closed after December 31, 1986, but before July 1, 1990, which is not exempt from federal income tax. The limit shall be determined as of July 1, 1990, and shall apply to allowable interest expenses for the term of the financing remaining on or after July 1, 1990.

3. Variable interest rate upper limit.

a. The limitation set forth in §§ 2.4 B 1 and 2.4 B 2 subdivisions 1 and 2 of this subsection shall be applied to debt financing which bears a variable interest rate as follows. The interest rate upper limit shall be determined on the date on which commitment for construction financing or closing for permanent financing takes place, and shall apply to allowable interest expenses during the term of such financing as if a fixed interest rate for the financing period had been obtained. A "fixed rate loan amortization schedule" shall be created for the loan period, using the interest rate cap in effect on the date of commitment for construction financing or the date of closing for permanent financing.

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b. If the interest rate for any cost reporting period is below the limit determined in subdivision 3 a above, no adjustment will be made to the provider's interest expense for that period, and a "carryover credit" to the extent of the amount allowable under the "fixed rate loan amortization schedule" will be created, but not paid. If the interest rate in a future cost reporting period is above the limit determined in subdivision 3 a above, the provider will be paid this "carryover credit" from prior period(s), not to exceed the cumulative carryover credit or his actual cost, whichever is less.

c. The provider shall be responsible for preparing a verifiable and auditable schedule to support cumulative computations of interest claimed under the "carryover credit," and shall submit such a schedule with each cost report.

4. The limitation set forth in §-2.4-B subdivisions 1, 2, and 3 of this subsection shall be applicable to financing for land, buildings, fixed equipment, major movable equipment, working capital for construction and permanent financing.

5. Where bond issues are used as a source of financing, the date of sale shall be considered as the date of closing.

6. The aggregate of the following costs shall be limited to 5.0% of the total allowable project costs:

- a. Examination Fees
- b. Guarantee Fees
- c. Financing Expenses (service fees, placement fees, feasibility studies, etc.)
- d. Underwriters Discounts
- e. Loan Points

7. The aggregate of the following financing costs shall be limited to 2.0% of the total allowable project costs:

- a. Legal Fees
- b. Cost Certification Fees
- c. Title and Recording Costs
- d. Printing and Engraving Costs
- e. Rating Agency Fees

C. DMAS shall allow costs associated with mortgage life insurance premiums in accordance with § 2130 of the HCFA-Pub. 15, Provider Reimbursement Manual (PRM-15).

D. Interest expense on a debt service reserve fund is an allowable expense if required by the terms of the financing agreement. However, interest income resulting from such fund shall be used by DMAS to offset interest expense.

§-2.5: 12 VAC 30-90-34. Purchases of nursing facilities (NF).

A. In the event of a sale of a NF, the purchaser must have a current license and certification to receive DMAS reimbursement as a provider.

B. The following reimbursement principles shall apply to the purchase of a NF:

1. The allowable cost of a bona fide sale of a facility (whether or not the parties to the sale were, are, or will be providers of Medicaid services) shall be the lowest of the sales price, the replacement cost value determined by independent appraisal, or the limitations of Part Subpart XVI - Revaluation of Assets (12 VAC 30-90-260 et seq.). Revaluation of assets shall be permitted only when a bona fide sale of assets occurs.

2. Notwithstanding the provisions of §-2.40 12 VAC 30-90-51, where there is a sale between related parties (whether or not they were, are or will be providers of Medicaid services), the buyer's allowable cost basis for the nursing facility shall be the seller's allowable depreciated historical cost (net book value), as determined for Medicaid reimbursement.

3. For purposes of Medicaid reimbursement, a "bona fide" sale shall mean a transfer of title and possession for consideration between parties which are not related. Parties shall be deemed to be "related" if they are related by reasons of common ownership or control. If the parties are members of an immediate family, the sale shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control." See §-2.40 12 VAC 30-90-51 C for definitions of "common ownership," "control," "immediate family," and "significant ownership or control."

4. The useful life of the fixed assets of the facility shall be determined by AHA guidelines.

5. The buyer's basis in the purchased assets shall be reduced by the value of the depreciation recapture due the state by the provider-seller, until arrangements for repayment have been agreed upon by DMAS.

6. In the event the NF is owned by the seller for less than five years, the reimbursable cost basis of the purchased NF to the buyer, shall be the seller's allowable historical cost as determined by DMAS.

C. An appraisal expert shall be defined as an individual or a firm that is experienced and specializes in multi-purpose appraisals of plant assets involving the establishing or reconstructing of the historical cost of such assets. Such an appraisal expert employs a specially trained and supervised staff with a complete range of appraisal and cost construction techniques; is experienced in appraisals of plant assets used by providers, and demonstrates a knowledge and understanding of the regulations involving applicable reimbursement principles, particularly those pertinent to depreciation; and is unrelated to either the buyer or seller.

D. At a minimum, appraisals must include a breakdown by cost category as follows:

1. Building; fixed equipment; movable equipment; land; land improvements.
2. The estimated useful life computed in accordance with AHA guidelines of the three categories, building,

fixed equipment, and movable equipment must be included in the appraisal. This information shall be utilized to compute depreciation schedules.

E. Depreciation recapture.

1. The provider-seller of the facility shall make a retrospective settlement with DMAS in instances where a gain was made on disposition. The department shall recapture the depreciation paid to the provider by Medicaid for the period of participation in the Program to the extent there is gain realized on the sale of the depreciable assets. A final cost report and refund of depreciation expense, where applicable, shall be due within 30 days from the transfer of title (as defined below).

2. No depreciation adjustment shall be made in the event of a loss or abandonment.

F. Reimbursable depreciation.

1. For the purpose of this section, "sale or transfer" shall mean any agreement between the transferor and the transferee by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and possession of the property.

2. Upon the sale or transfer of the real and tangible personal property comprising a licensed nursing facility certified to provide services to DMAS, the transferor or other person liable therein shall reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing such services and subject to recapture under the provisions of the State Plan for Medical Assistance. The amount of reimbursable depreciation shall be paid to the Commonwealth within 30 days of the sale or transfer of the real property unless an alternative form of repayment, the term of which shall not exceed one year, is approved by the director.

3. Prior to the transfer, the transferor shall file a written request by certified or registered mail to the director for a letter of verification that he either does not owe the Commonwealth any amount for reimbursable depreciation or that he has repaid any amount owed the Commonwealth for reimbursable depreciation or that an alternative form of repayment has been approved by the director. The request for a letter of verification shall state:

- a. That a sale or transfer is about to be made;
- b. The location and general description of the property to be sold or transferred;
- c. The names and addresses of the transferee and transferor and all such business names and addresses of the transferor for the last three years; and
- d. Whether or not there is a debt owing to the Commonwealth for the amount of depreciation charges previously allowed and reimbursed as a reasonable cost to the transferor under the Virginia Medical Assistance Program.

4. Within 90 days after receipt of the request, the director shall determine whether or not there is an amount due to the Commonwealth by the nursing facility by reason of depreciation charges previously allowed and reimbursed as a reasonable cost under DMAS and shall notify the transferor of such sum, if any.

5. The transferor shall provide a copy of this section and a copy of his request for a letter of verification to the prospective transferee via certified mail at least 30 days prior to the transfer. However, whether or not the transferor provides a copy of this section and his request for verification to the prospective transferee as required herein, the transferee shall be deemed to be notified of the requirements of this law.

6. After the transferor has made arrangements satisfactory to the director to repay the amount due or if there is no amount due, the director shall issue a letter of verification to the transferor in recordable form stating that the transferor has complied with the provisions of this section and setting forth the term of any alternative repayment agreement. The failure of the transferor to reimburse to the Commonwealth the amount of depreciation previously allowed as a reasonable cost of providing service to DMAS in a timely manner renders the transfer of the nursing facility ineffective as to the Commonwealth.

7. Upon a finding by the director that such sale or transfer is ineffective as to the Commonwealth, DMAS may collect any sum owing by any means available by law, including devising a schedule for reducing the Medicaid reimbursement to the transferee up to the amount owed the Commonwealth for reimbursable depreciation by the transferor or other person liable therein. Medicaid reimbursement to the transferee shall continue to be so reduced until repayment is made in full or the terms of the repayment are agreed to by the transferor or person liable therein.

8. In the event the transferor or other person liable therein defaults on any such repayment agreement the reductions of Medicaid reimbursement to the transferee may resume.

An action brought or initiated to reduce the transferee's Medicaid reimbursement or an action for attachment or levy shall not be brought or initiated more than six months after the date on which the sale or transfer has taken place unless the sale or transfer has been concealed or a letter of verification has not been obtained by the transferor or the transferor defaults on a repayment agreement approved by the director.

Article 2.

Operating Cost Component.

§-2.6. 12 VAC 30-90-40. Operating cost.

A. Operating cost shall be the total allowable inpatient cost less plant cost and NATCEPs costs. See Part VII for rate determination procedures for NATCEPs costs. To calculate the reimbursement rate, operating cost shall be converted to a per diem amount by dividing it by the greater of actual patient days, or the number of patient days computed as 95%

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of the daily licensed bed complement during the applicable cost reporting period.

B. For NFs of 30 beds or less, to calculate the reimbursement rate the number of patient days will continue to be computed as not less than 85% of the daily licensed bed complement.

~~§ 2.7.~~ 12 VAC 30-90-41. Nursing facility reimbursement formula.

A. Effective on and after October 1, 1990, all NFs subject to the prospective payment system shall be reimbursed under a revised formula entitled "The Patient Intensity Rating System (PIRS)." PIRS is a patient based methodology which links NF's per diem rates to the intensity of services required by a NF's patient mix. Three classes were developed which group patients together based on similar functional characteristics and service needs.

1. Any NF receiving Medicaid payments on or after October 1, 1990, shall satisfy all the requirements of § 1919(b) through (d) of the Social Security Act as they relate to provision of services, residents' rights and administration and other matters.

2. Direct and indirect group ceilings.

a. In accordance with ~~§ 1.3~~ 12 VAC 30-90-20 C, direct patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA, the Richmond-Petersburg MSA and the rest of the state. Direct patient care operating costs shall be as defined in ~~VR 460-03-1494~~ 12 VAC 30-90-270.

b. Indirect patient care operating cost peer groups shall be established for the Virginia portion of the Washington DC-MD-VA MSA and for the rest of the state. Indirect patient care operating costs shall include all other operating costs, not defined in ~~VR 460-03-4.1944~~ 12 VAC 30-90-270 as direct patient care operating costs and NATCEPs costs.

c. Effective July 1, 1995, existing indirect peer group ceilings of nursing facilities shall be adjusted according to the schedule below. These adjustments shall be added to the ceiling in effect for each facility on July 1, 1995, and shall apply from that day until the end of the facility's fiscal year in progress at that time. Peer group ceilings for the subsequent fiscal year shall be calculated by adding the adjustments below to the existing interim ceiling. The resulting adjusted interim ceiling shall be increased by 100% of historical inflation to the beginning of the facility's next fiscal year to obtain the new "interim" ceiling, and by 50% of the forecast inflation to the end of the facility's next fiscal year. This action increases the number of indirect patient care operating cost peer groups to a total of eight, four peer groups for the area within the Washington DC-MD-VA MSA, and four for the rest of the state.

Licensed Bed Size	Ceiling Adjustment
1 to 30	add \$1.89
31 to 60	add \$1.28
61 to 90	add \$0.62
Over 90	add \$0.00

3. Each NF's Service Intensity Index (SII) shall be calculated for each semiannual period of a NF's fiscal year based upon data reported by that NF and entered into DMAS' Long Term Care Information System (LTCIS). Data will be reported on the multidimensional assessment form prescribed by DMAS (now DMAS-95) at the time of admission and then twice a year for every Medicaid recipient in a NF. The NF's SII, derived from the assessment data, will be normalized by dividing it by the average for all NF's in the state.

See ~~VR 460-03-4.1944~~ 12 VAC 30-90-300 for the PIRS class structure, the relative resource cost assigned to each class, the method of computing each NF's facility score and the methodology of computing the NF's semiannual SII's.

4. The normalized SII shall be used to calculate the initial direct patient care operating cost peer group medians. It shall also be used to calculate the direct patient care operating cost prospective ceilings and direct patient care operating cost prospective rates for each semiannual period of a NF's subsequent fiscal years.

a. The normalized SII, as determined during the quarter ended September 30, 1990, shall be used to calculate the initial direct patient care operating cost peer group medians.

b. A NF's direct patient care operating cost prospective ceiling shall be the product of the NF's peer group direct patient care ceiling and the NF's normalized SII for the previous semiannual period. A NF's direct patient care operating cost prospective ceiling will be calculated semiannually.

c. An SSI rate adjustment, if any, shall be applied to a NF's prospective direct patient care operating cost base rate for each semiannual period of a NF's fiscal year. The SII determined in the second semiannual period of the previous fiscal year shall be divided by the average of the previous fiscal year's SII's to determine the SII rate adjustment, if any, to the first semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate. The SII determined in the first semiannual period of the subsequent fiscal year shall be divided by the average of the previous fiscal year's SII's to determine the SII rate adjustment, if any, to the second semiannual period of the subsequent fiscal year's prospective direct patient care operating cost base rate.

d. See ~~VR 460-03-4.1944~~ 12 VAC 30-90-300 for an illustration of how the SII is used to adjust direct patient care operating ceilings and the semiannual

rate adjustments to the prospective direct patient care operating cost base rate.

5. An adjustment factor shall be applied to both the direct patient care and indirect patient care peer group medians to determine the appropriate initial peer group ceilings.

a. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during fiscal year 1991 under the prospective payment system in effect through September 30, 1990, as modified to incorporate the estimated additional NF reimbursement mandated by the provisions of § 1902(a)(13)(A) of the Social Security Act as amended by § 4211(b)(1) of the Omnibus Budget Reconciliation Act of 1987.

b. The DMAS shall calculate the estimated gross NF reimbursement required for the forecasted number of NF bed days during FY 1991 under the PIRS prospective payment system.

c. The DMAS shall determine the differential between a and b above and shall adjust the peer group medians within the PIRS as appropriate to reduce the differential to zero.

d. The adjusted PIRS peer group medians shall become the initial peer group ceilings.

B. The allowance for inflation shall be based on the percentage of change in the moving average of the Skilled Nursing Facility Market Basket of Routine Service Costs, as developed by Data Resources, Incorporated, adjusted for Virginia, determined in the quarter in which the NF's most recent fiscal year ended. NFs shall have their prospective operating cost ceilings and prospective operating cost rates established in accordance with the following methodology:

1. The initial peer group ceilings established under § 2-7 A subsection A of this section shall be the final peer group ceilings for a NF's first full or partial fiscal year under PIRS and shall be considered as the initial "interim ceilings" for calculating the subsequent fiscal year's peer group ceilings. Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the initial "interim" ceilings by a "percentage factor" which shall eliminate any allowances for inflation after September 30, 1990, calculated in both §§ 2-7 subdivisions A 5 a and 2-7 A 5 c of this section. The adjusted initial "interim" ceilings shall be considered as the final "interim ceiling." Peer group ceilings for subsequent fiscal years shall be calculated by adjusting the final "interim" ceiling, as determined above, by 100% of historical inflation from October 1, 1990, to the beginning of the NFs next fiscal year to obtain new "interim" ceilings, and 50% of the forecasted inflation to the end of the NFs next fiscal year.

2. A NF's average allowable operating cost rates, as determined from its most recent fiscal year's cost report, shall be adjusted by 50% of historical inflation and 50% of the forecasted inflation to calculate its prospective operating cost base rates.

C. The PIRS method shall still require comparison of the prospective operating cost rates to the prospective operating ceilings. The provider shall be reimbursed the lower of the prospective operating cost rates or prospective operating ceilings.

D. Nonoperating costs. 4. Allowable plant costs shall be reimbursed in accordance with Part II, Article 4 this article. Plant costs shall not include the component of cost related to making or producing a supply or service.

2. NATCEPs cost shall be reimbursed in accordance with Part VII 12 VAC 30-90-170.

E. The prospective rate for each NF shall be based upon operating cost and plant cost components or charges, whichever is lower, plus NATCEPs costs. The disallowance of nonreimbursable operating costs in any current fiscal year shall be reflected in a subsequent year's prospective rate determination. Disallowances of nonreimbursable plant costs and NATCEPs costs shall be reflected in the year in which the nonreimbursable costs are included.

F. For those NFs whose operating cost rates are below the ceilings, an incentive plan shall be established whereby a NF shall be paid, on a sliding scale, up to 25% of the difference between its allowable operating cost rates and the peer group ceilings under the PIRS.

1. The following table below presents four incentive examples under the PIRS:

Peer Group Ceilings	Allowable Cost Per Day	Difference	% of Ceiling	Sliding Scale	Scale % Difference
\$30.00	\$27.00	\$3.00	10%	\$.30	10%
30.00	22.50	7.50	25%	1.88	25%
30.00	20.00	10.00	33%	2.50	25%
30.00	30.00	0	0		

2. Separate efficiency incentives shall be calculated for both the direct and indirect patient care operating ceilings and costs.

G. Quality of care requirement. A cost efficiency incentive shall not be paid to a NF for the prorated period of time that it is not in conformance with substantive, nonwaived life, safety, or quality of care standards.

H. Sale of facility. In the event of the sale of a NF, the prospective base operating cost rates for the new owner's first fiscal period shall be the seller's prospective base operating cost rates before the sale.

I. Public notice. To comply with the requirements of § 1902(a)(28)(c) of the Social Security Act, DMAS shall make available to the public the data and methodology used in establishing Medicaid payment rates for nursing facilities. Copies may be obtained by request under the existing procedures of the Virginia Freedom of Information Act.

§ 2-8. 12 VAC 30-90-42. Phase-in period.

A. To assist NFs in converting to the PIRS methodology, a phase-in period shall be provided until June 30, 1992.

B. From October 1, 1990, through June 30, 1991, a NF's prospective operating cost rate shall be a blended rate

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calculated at 33% of the PIRS operating cost rates determined by ~~§ 2.7 above~~ 12 VAC 30-90-41 and 67% of the "current" operating rate determined by subsection D below.

C. From July 1, 1991, through June 30, 1992, a NF's prospective operating cost rate shall be a blended rate calculated at 67% of the PIRS operating cost rate determined by ~~§ 2.7 above~~ 12 VAC 30-90-41 and 33% of the "current" operating rate determined by subsection D below.

D. The following methodology shall be applied to calculate a NF's "current" operating rate:

1. Each NF shall receive as its base "current" operating rate, the weighted average prospective operating cost per diems and efficiency incentive per diems if applicable, calculated by DMAS to be effective September 30, 1990.

2. The base "current" operating rate established above shall be the "current" operating rate for the NF's first partial fiscal year under PIRS. The base "current" operating rate shall be adjusted by appropriate allowance for historical inflation and 50% of the forecasted inflation based on the methodology contained in ~~§ 2.7~~ 12 VAC 30-90-41 B at the beginning of each of the NF's fiscal years which starts during the phase-in period, October 1, 1990, through June 30, 1992, to determine the NF's prospective "current" operating rate. See ~~VR 460-03-4.1944~~ 12 VAC 30-90-300 for example calculations.

§ 2.8.1. 12 VAC 30-90-43. Nursing facility rate change.

For the period beginning July 1, 1991, and ending June 30, 1992, the per diem operating rate for each NF shall be adjusted. This shall be accomplished by applying a uniform adjustment factor to the rate of each NF.

Article 3.

Allowable Cost Identification.

§ 2.9. 12 VAC 30-90-50. Allowable costs.

A. Costs which are included in rate determination procedures and final settlement shall be only those allowable, reasonable costs which are acceptable under the Medicare principles of reimbursement, except as specifically modified in the Plan and as may be subject to individual or ceiling cost limitations and which are classified in accordance with the DMAS uniform chart of accounts (see ~~VR 460-03-4.1944~~, Uniform Expense Classification 12 VAC 30-90-270).

A. B. Certification. The cost of meeting all certification standards for NF requirements as required by the appropriate state agencies, by state laws, or by federal legislation or regulations.

B. C. Operating costs.

1. Direct patient care operating costs shall be defined in ~~VR 460-03-4.1944~~ 12 VAC 30-90-270.

2. Allowable direct patient care operating costs shall exclude (i) personal physician fees, and (ii) pharmacy services and prescribed legend and nonlegend drugs provided by nursing facilities which operate licensed in-house pharmacies. These services shall be billed

directly to DMAS through separate provider agreements and DMAS shall pay directly in accordance with ~~subsections e and f of Attachment 4.19 B of the State Plan for Medical Assistance (VR 460-02-4.1920)~~ 12 VAC 30-80-10 *et seq.*

3. Indirect patient care operating costs include all other operating costs, not identified as direct patient care operating costs and NATCEPs costs in ~~VR 460-03-4.1944~~ 12 VAC 30-90-270, which are allowable under the Medicare principles of reimbursement, except as specifically modified herein and as may be subject to individual cost or ceiling limitations.

G. D. Allowances/goodwill. Bad debts, goodwill, charity, courtesy, and all other contractual allowances shall not be recognized as an allowable cost.

D. E. Cost of protecting employees from blood borne pathogens. Effective July 1, 1994, reimbursement of allowable costs shall be adjusted in the following way to recognize the costs of complying with requirements of the Occupational Safety and Health Administration (OSHA) for protecting employees against exposure to blood borne pathogens.

1. Hepatitis B immunization. The statewide median of the reasonable acquisition cost per unit of immunization times the number of immunizations provided to eligible employees during facility fiscal years ending during SFY 1994, divided by Medicaid days in the same fiscal period, shall be added to the indirect peer group ceiling effective July 1, 1994. This increase to the ceilings shall not exceed \$.09 per day for SFY 1995.

2. Other OSHA compliance costs. The indirect peer group ceilings shall be increased by \$.07, effective July 1, 1994, to recognize continuing OSHA compliance costs other than immunization.

3. Data submission by nursing facilities. Nursing facilities shall provide for fiscal years ending during SFY 1994, on forms provided by DMAS, (i) the names, job titles and social security numbers of individuals immunized, the number of immunizations provided to each and the dates of immunization; and (ii) the acquisition cost of immunization.

§ 2.10. 12 VAC 30-90-51. Purchases/related organizations.

A. Costs applicable to services, facilities, and supplies furnished to the provider by organizations related to the provider by common ownership or control shall be included in the allowable cost of the provider at the cost to the related organization, provided that such costs do not exceed the price of comparable services, facilities or supplies. Purchases of existing NFs by related parties shall be governed by the provisions of ~~§ 2.5~~ 12 VAC 30-90-34 B 2.

Allowable cost applicable to management services furnished to the provider by organizations related to the provider by common ownership or control shall be lesser of the cost to the related organization or the per patient day ceiling limitation established for management services cost. (See ~~VR 460-03-4.1943~~, Cost Reimbursement Limitations 12 VAC 30-90-290.)

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B. Related to the provider shall mean that the provider is related by reasons of common ownership or control by the organization furnishing the services, facilities, or supplies.

C. Common ownership exists when an individual or individuals or entity or entities possess significant ownership or equity in the parties to the transaction. Control exists where an individual or individuals or entity or entities have the power, directly or indirectly, significantly to influence or direct the actions or policies of the parties to the transaction. Significant ownership or control shall be deemed to exist where an individual is a "person with an ownership or control interest" within the meaning of 42 CFR 455.101. If the parties to the transaction are members of an immediate family, as defined below, the transaction shall be presumed to be between related parties if the ownership or control by immediate family members, when aggregated together, meets the definitions of "common ownership" or "control," as set forth above. Immediate family shall be defined to include, but not be limited to, the following: (i) husband and wife, (ii) natural parent, child and sibling, (iii) adopted child and adoptive parent, (iv) step-parent, step-child, step-sister, and step-brother, (v) father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law and daughter-in-law, and (vi) grandparent and grandchild.

D. Exception to the related organization principle.

1. Effective with cost reports having fiscal years beginning on or after July 1, 1986, an exception to the related organization principle shall be allowed. Under this exception, charges by a related organization to a provider for goods or services shall be allowable cost to the provider if all four of the conditions set out below are met.

2. The exception applies if the provider demonstrates by convincing evidence to the satisfaction of DMAS that the following criteria have been met:

a. The supplying organization is a bona fide separate organization. This means that the supplier is a separate sole proprietorship, partnership, joint venture, association or corporation and not merely an operating division of the provider organization.

b. A substantial part of the supplying organization's business activity of the type carried on with the provider is transacted with other organizations not related to the provider and the supplier by common ownership or control and there is an open, competitive market for the type of goods or services furnished by the organization. In determining whether the activities are of similar type, it is important to also consider the scope of the activity.

For example, a full service management contract would not be considered the same type of business activity as a minor data processing contract. The requirement that there be an open, competitive market is merely intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well informed buyers and sellers.

c. The goods or services shall be those which commonly are obtained by institutions such as the provider from other organizations and are not a basic element of patient care ordinarily furnished directly to patients by such institutions. This requirement means that institutions such as the provider typically obtain the good or services from outside sources rather than producing the item internally.

d. The charge to the provider is in line with the charge for such services, or supplies in the open market and no more than the charge made under comparable circumstances to others by the organization for such goods or services. The phrase "open market" takes the same meaning as "open, competitive market" in subdivision b above.

3. Where all of the conditions of this exception are met, the charges by the supplier to the provider for such goods or services shall be allowable as costs.

4. This exception does not apply to the purchase, lease or construction of assets such as property, buildings, fixed equipment or major movable equipment. The terms "goods and services" may not be interpreted or construed to mean capital costs associated with such purchases, leases, or construction.

E. Three competitive bids shall not be required for the building and fixed equipment components of a construction project outlined in §-2.2 12 VAC 30-90-31. Reimbursement shall be in accordance with §-2.10-A subsection A of this section with the limitations stated in §-2.2 12 VAC 30-90-31 B.

§-2.44. 12 VAC 30-90-52. Administrator/owner compensation.

A. Administrators' compensation, whether administrators are owners or non-owners, shall be based on a schedule adopted by DMAS and varied according to facility bed size. The compensation schedule shall be adjusted annually to reflect cost-of-living increases and shall be published and distributed to providers annually. The administrator's compensation schedule covers only the position of administrator and assistants and does not include the compensation of owners employed in capacities other than the NF administrator (see VR-460-03-4-1943, Cost Reimbursement Limitations 12 VAC 30-90-290).

B. Administrator compensation shall mean remuneration paid regardless of the form in which it is paid. This includes, but shall not be limited to, salaries, professional fees, insurance premiums (if the benefits accrue to the employer/owner or his beneficiary) director fees, personal use of automobiles, consultant fees, management fees, travel allowances, relocation expenses in excess of IRS guidelines, meal allowances, bonuses, pension plan costs, and deferred compensation plans. Management fees, consulting fees, and other services performed by owners shall be included in the total compensation if they are performing administrative duties regardless of how such services may be classified by the provider.

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C. Compensation for all administrators (owner and nonowner) shall be based upon a 40-hour week to determine reasonableness of compensation.

D. Owner/administrator employment documentation.

1. Owners who perform services for a NF as an administrator and also perform additional duties must maintain adequate documentation to show that the additional duties were performed beyond the normal 40 hour week as an administrator. The additional duties must be necessary for the operation of the NF and related to patient care.

2. Services provided by owners, whether in employee capacity, through management contracts, or through home office relationships shall be compared to the cost and services provided in arms-length transactions.

3. Compensation for such services shall be adjusted where such compensation exceeds that paid in such arms-length transactions or where there is a duplication of duties normally rendered by an administrator. No reimbursement shall be allowed for compensation where owner services cannot be documented and audited.

~~§ 2.12. 12 VAC 30-90-53. Depreciation.~~

The allowance for depreciation shall be restricted to the straight line method with a useful life in compliance with AHA guidelines. If the item is not included in the AHA guidelines, reasonableness shall be applied to determine useful life.

~~§ 2.13. 12 VAC 30-90-54. Rent/Leases.~~

Rent or lease expenses shall be limited by the provisions of ~~VR 460-03-4.1942, Leasing of Facilities~~ 12 VAC 30-90-280.

~~§ 2.14. 12 VAC 30-90-55. Provider payments.~~

A. Limitations.

1. Payments to providers, shall not exceed charges for covered services except for (i) public providers furnishing services free of charge or at a nominal charge (ii) nonpublic provider whose charges are 60% or less of the allowable reimbursement represented by the charges and that demonstrates its charges are less than allowable reimbursement because its customary practice is to charge patients based on their ability to pay. Nominal charge shall be defined as total charges that are 60% or less of the allowable reimbursement of services represented by these charges. Providers qualifying in this section shall receive allowable reimbursement as determined in this Plan.

2. Allowable reimbursement in excess of charges may be carried forward for payment in the two succeeding cost reporting periods. A new provider may carry forward unreimbursed allowable reimbursement in the five succeeding cost reporting periods.

3. Providers may be reimbursed the carry forward to a succeeding cost reporting period (i) if total charges for the services provided in that subsequent period exceed the total allowable reimbursement in that period (ii) to the extent that the accumulation of the carry forward and the

allowable reimbursement in that subsequent period do not exceed the providers' direct and indirect care operating ceilings plus allowable plant cost.

B. Payment for service shall be based upon the rate in effect when the service was rendered.

C. For cost reports filed on or after August 1, 1992, an interim settlement shall be made by DMAS within 180 days after receipt and review of the cost report. The 180-day time frame shall similarly apply to cost reports filed but not interim settled as of August 1, 1992. The word "review," for purposes of interim settlement, shall include verification that all financial and other data specifically requested by DMAS is submitted with the cost report. Review shall also mean examination of the cost report and other required submission for obvious errors, inconsistency, inclusion of past disallowed costs, unresolved prior year cost adjustments and a complete signed cost report that conforms to the current DMAS requirements herein.

However, an interim settlement shall not be made when one of the following conditions exists.

1. Cost report filed by a terminated provider;
2. Insolvency of the provider at the time the cost report is submitted;
3. Lack of a valid provider agreement and decertification;
4. Moneys owed to DMAS;
5. Errors or inconsistencies in the cost report; or
6. Incomplete/nonacceptable cost report.

~~§ 2.15. 12 VAC 30-90-56. Legal fees/accounting.~~

A. Costs claimed for legal/accounting fees shall be limited to reasonable and customary fees for specific services rendered. Such costs must be related to patient care as defined by Medicare principles of reimbursement and subject to applicable regulations herein. Documentation for legal costs must be available at the time of audit.

B. Retainer fees shall be considered an allowable cost up to the limits established in ~~VR 460-03-4.1943, Cost Reimbursement Limitations~~ 12 VAC 30-90-290.

C. As mandated by the Omnibus Budget Reconciliation Act of 1990, effective November 5, 1990, reimbursement of legal expenses for frivolous litigation shall be denied if the action is initiated on or after November 5, 1990. Frivolous litigation is any action initiated by the nursing facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action.

~~§ 2.16. 12 VAC 30-90-57. Documentation.~~

Adequate documentation supporting cost claims must be provided at the time of interim settlement, cost settlement, audit, and final settlement.

~~§ 2.17. 12 VAC 30-90-58. Fraud and abuse.~~

Previously disallowed costs which are under appeal and affect more than one cost reporting period shall be disclosed in subsequent cost reports if the provider wishes to reserve

appeal rights for such subsequent cost reports. The reimbursement effect of such appealed costs shall be computed by the provider and submitted to DMAS with the cost report. Where such disclosure is not made to DMAS, the inclusion of previously disallowed costs may be referred to the Medicaid Fraud Control Unit of the Office of the Attorney General.

Article 4. New Nursing Facilities.

§ 2-18. 12 VAC 30-90-60. Interim rate.

A. For all new or expanded NFs the 95% occupancy requirement shall be waived for establishing the first cost reporting period interim rate. This first cost reporting period shall not exceed 12 months from the date of the NF's certification.

B. Upon a showing of good cause, and approval of the DMAS, an existing NF that expands its bed capacity by 50% or more shall have the option of retaining its prospective rate, or being treated as a new NF.

C. The 95% occupancy requirement shall be applied to the first and subsequent cost reporting periods' actual costs for establishing such NF's second and future cost reporting periods' prospective reimbursement rates. The 95% occupancy requirement shall be considered as having been satisfied if the new NF achieved a 95% occupancy at any point in time during the first cost reporting period.

D. A new NF's interim rate for the first cost reporting period shall be determined based upon the lower of its anticipated allowable cost determined from a detailed budget (or pro forma cost report) prepared by the provider and accepted by the DMAS, or the appropriate operating ceilings or charges.

E. On the first day of its second cost reporting period, a new nursing facility's interim plant rate shall be converted to a per diem amount by dividing it by the number of patient days computed as 95% of the daily licensed bed complement during the first cost reporting period.

F. Any NF receiving reimbursement under new NF status shall not be eligible to receive the blended phase-in period rate under § 2-8 12 VAC 30-90-42.

G. During its first semiannual period of operation, a newly constructed or newly enrolled NF shall have an assigned SII based upon its peer group's average SII for direct patient care. An expanded NF receiving new NF treatment shall receive the SII calculated for its last semiannual period prior to obtaining new NF status.

§ 2-19. 12 VAC 30-90-65. Final rate.

The DMAS shall reimburse the lower of the appropriate operating ceilings, charges or actual allowable cost for a new NF's first cost reporting period of operation, subject to the procedures outlined above in § 2-18 12 VAC 30-90-60 A, C, E, and F.

Upon determination of the actual allowable operating cost for direct patient care and indirect patient care the per diem amounts shall be used to determine if the provider is below the peer group ceiling used to set its interim rate. If costs are

below those ceilings, an efficiency incentive shall be paid at settlement of the first year cost report.

This incentive will allow a NF to be paid up to 25% of the difference between its actual allowable operating cost and the peer group ceiling used to set the interim rate. (Refer to § 2-7 12 VAC 30-90-41 F.)

Article 5. Cost Reports.

§ 2-20. 12 VAC 30-90-70. Cost report submission.

A. Cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, it is considered delinquent. The cost report shall be deemed complete for the purpose of cost settlement when DMAS has received all of the following, with the exception that the audited financial statements required by subdivisions 3 a and 6 b of this subsection shall be considered timely filed if received not later than 120 days after the provider's fiscal year end:

1. Completed cost reporting form(s) provided by DMAS, with signed certification(s);
2. The provider's trial balance showing adjusting journal entries;
3. a. The provider's audited financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), a statement of cash flows, the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, footnotes to the financial statements, and the management report. Multi-facility providers shall be governed by § 2-20 subdivision A 6 of this section;
- b. Schedule of restricted cash funds that identify the purpose of each fund and the amount;
- c. Schedule of investments by type (stock, bond, etc.), amount, and current market value;
4. Schedules which reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule;
6. NFs which are part of a chain organization must also file:
 - a. Home office cost report;
 - b. Audited consolidated financial statements of the chain organization including the auditor's report in which he expresses his opinion or, if circumstances require, disclaims an opinion based on generally accepted auditing standards, the management report and footnotes to the financial statements;
 - c. The NFs financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of cash flows;

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d. Schedule of restricted cash funds that identify the purpose of each fund and the amount;

e. Schedule of investments by type (stock, bond, etc.), amount, and current market value; and

7. Such other analytical information or supporting documentation that may be required by DMAS.

B. When cost reports are delinquent, the provider's interim rate shall be reduced by 20% the first month and an additional 20% of the original interim rate for each subsequent month the report has not been submitted. DMAS shall notify the provider of the schedule of reductions which shall start on the first day of the following month. For example, for a September 30 fiscal year end, notification will be mailed in early January stating that payments will be reduced starting with the first payment in February.

C. After the overdue cost report is received, desk reviewed, and a new prospective rate established, the amounts withheld shall be computed and paid. If the provider fails to submit a complete cost report within 180 days after the fiscal year end, a penalty in the amount of 10% of the balance withheld shall be forfeited to DMAS.

~~§ 2-21. 12 VAC 30-90-75. Reporting form; accounting method; cost report extensions; fiscal year changes.~~

A. All cost reports shall be submitted on uniform reporting forms provided by the DMAS, or by Medicare if applicable. Such cost reports, subsequent to the initial cost report period, shall cover a 12-month period. Any exceptions must be approved by the DMAS.

~~§ 2-22. Accounting method.~~

B. The accrual method of accounting and cost reporting is mandated for all providers.

~~§ 2-23. Cost report extensions.~~

A. C. Extension for submission of a cost report may be granted if the provider can document extraordinary circumstances beyond its control. B. Extraordinary circumstances do not include:

1. Absence or changes of chief finance officer, controller or bookkeeper;
2. Financial statements not completed;
3. Office or building renovations;
4. Home office cost report not completed;
5. Change of stock ownership;
6. Change of intermediary;
7. Conversion to computer; or
8. Use of reimbursement specialist.

~~§ 2-24. Fiscal year changes.~~

D. All fiscal year end changes must be approved 90 days prior to the beginning of a new fiscal year.

Article 6. Prospective Rates.

~~§ 2-25. 12 VAC 30-90-80. Time frames.~~

A. For cost reports filed on or after August 1, 1992, a prospective rate shall be determined by DMAS within 90 days of the receipt of a complete cost report. (See ~~§ 2-20 12 VAC 30-90-70 A.~~) The 180-day time frame shall similarly apply to cost reports filed but for which a prospective rate has not been set as of August 1, 1992. Rate adjustments shall be made retroactive to the first day of the provider's new cost reporting year. Where a field audit is necessary to set a prospective rate, the DMAS shall have an additional 90 days to determine any appropriate adjustments to the prospective rate as a result of such field audit. This time period shall be extended if delays are attributed to the provider.

B. Subsequent to establishing the prospective rate DMAS shall conclude the desk audit of a providers' cost report and determine if further field audit activity is necessary. The DMAS will seek repayment or make retroactive settlements when audit adjustments are made to costs claimed for reimbursement.

Article 7. Retrospective Rates.

~~§ 2-26. 12 VAC 30-90-90. Retrospective rates.~~

The retrospective method of reimbursement shall be used for mental health/mental retardation facilities.

~~§ 2-27. 12 VAC 30-90-100. (Reserved)~~

Article 8. Record Retention.

~~§ 2-28. Time frames. 12 VAC 30-90-110. Record retention.~~

A. *Time frames.* All of the NF's accounting and related records, including the general ledger, books of original entry, and statistical data must be maintained for a minimum of five years, or until all affected cost reports are final settled.

B. Certain information must be maintained for the duration of the provider's participation in the DMAS and until such time as all cost reports are settled. Examples of such information are set forth in ~~§ 2-29 subsection B of this section.~~

~~§ 2-29. B. Types of records to be maintained.~~ Information which must be maintained for the duration of the provider's participation in the DMAS includes, but is not limited to:

1. Real and tangible property records, including leases and the underlying cost of ownership;
2. Itemized depreciation schedules;
3. Mortgage documents, loan agreements, and amortization schedules;
4. Copies of all cost reports filed with the DMAS together with supporting financial statements.

~~§ 2-30. C. Record availability.~~ The records must be available for audits by DMAS staff. Where such records are not available, costs shall be disallowed.

Article 9.
Audits.

§ 2.31. 12 VAC 30-90-120. Audit overview; scope of audit.

A. Desk audits shall be performed to verify the completeness and accuracy of the cost report, and reasonableness of costs claimed for reimbursement. Field audits, as determined necessary by the DMAS, shall be performed on the records of each participating provider to determine that costs included for reimbursement were accurately determined and reasonable, and do not exceed the ceilings or other reimbursement limitations established by the DMAS.

§ 2.32. Scope of audit.

B. The scope of the audit includes, but shall not be limited to: trial balance verification, analysis of fixed assets, indebtedness, selected revenues, leases and the underlying cost of ownership, rentals and other contractual obligations, and costs to related organizations. The audit scope may also include various other analyses and studies relating to issues and questions unique to the NF and identified by the DMAS. Census and related statistics, patient trust funds, and billing procedures are also subject to audit.

§ 2.33. 12 VAC 30-90-121. Field audit requirements.

Field audits shall be required as follows:

1. For the first cost report on all new NF's.
2. For the first cost report in which costs for bed additions or other expansions are included.
3. When a NF is sold, purchased, or leased.
4. As determined by DMAS desk audit.

§ 2.34. 12 VAC 30-90-122. Provider notification.

The provider shall be notified in writing of all adjustments to be made to a cost report resulting from desk or field audit with stated reasons and references to the appropriate principles of reimbursement or other appropriate regulatory cites.

§ 2.35. 12 VAC 30-90-123. Field audit exit conference.

A. The provider shall be offered an exit conference to be executed within 15 days following completion of the on-site audit activities, unless other time frames are mutually agreed to by the DMAS and provider. Where two or more providers are part of a chain organization or under common ownership, DMAS shall have up to 90 days after completion of all related on-site audit activities to offer an exit conference for all such NFs. The exit conference shall be conducted at the site of the audit or at a location mutually agreeable to the DMAS and the provider.

B. The purpose of the exit conference shall be to enable the DMAS auditor to discuss such matters as the auditor deems necessary, to review the proposed field audit adjustments, and to present supportive references. The provider will be given an opportunity during the exit conference to present additional documentation and agreement or disagreement with the audit adjustments.

C. All remaining adjustments, including those for which additional documentation is insufficient or not accepted by the DMAS, shall be applied to the applicable cost report(s) regardless of the provider's approval or disapproval.

D. The provider shall sign an exit conference form that acknowledges the review of proposed adjustments.

E. After the exit conference the DMAS shall perform a review of all remaining field audit adjustments. Within a reasonable time and after all documents have been submitted by the provider, the DMAS shall transmit in writing to the provider a final field audit adjustment report (FAAR), which will include all remaining adjustments not resolved during the exit conference. The provider shall have 15 days from the date of the letter which transmits the FAAR, to submit any additional documentation which may affect adjustments in the FAAR.

§ 2.36. 12 VAC 30-90-124. Audit delay.

In the event the provider delays or refuses to permit an audit to occur or to continue or otherwise interferes with the audit process, payments to the provider shall be reduced as stated in § 2.29 12 VAC 30-90-70 B.

§ 2.37. 12 VAC 30-90-125. Field audit time frames.

A. If a field audit is necessary after receipt of a complete cost report, such audit shall be initiated within three years following the date of the last notification of program reimbursement and the on site activities, including exit conferences, shall be concluded within 180 days from the date the field audit begins. Where audits are performed on cost reports for multiple years or providers, the time frames shall be reasonably extended for the benefit of the DMAS and subject to the provisions of § 2.35 12 VAC 30-90-123.

B. Documented delays on the part of the provider will automatically extend the above time frames to the extent of the time delayed.

C. Extensions of the time frames shall be granted to the department for good cause shown.

D. Disputes relating to the timeliness established in §§ 2.35 and 2.37 12 VAC 30-90-123 and 12 VAC 30-90-124, or to the grant of extensions to the DMAS, shall be resolved by application to the Director of the DMAS or his designee.

PART Subpart III.
Appeals.

§ 3.1. 12 VAC 30-90-130. Dispute resolution for nonstate operated nursing facilities.

A. NF's have the right to appeal the DMAS's interpretation and application of state and federal Medicaid and applicable Medicare principles of reimbursement in accordance with the Administrative Process Act, § 9-6.14.1 et seq. and § 32.1-325.1 of the Code of Virginia.

B. Nonappealable issues are identified below:

1. The use of state and federal Medicaid and applicable Medicare principles of reimbursement.
2. The organization of participating NF's into peer groups according to location as a proxy for cost variation

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across facilities with similar operating characteristics. The use of individual ceilings as a proxy for determining efficient operation within each peer group.

3. Calculation of the initial peer group ceilings using the most recent cost settled data available to DMAS that reflects NF operating costs inflated to September 30, 1990.

4. The use of the moving average of the Skilled Nursing Facility market basket of routine service costs, as developed by Data Resources, Incorporated, adjusted for Virginia, as the prospective escalator.

5. The establishment of separate ceilings for direct operating costs and indirect operating costs.

6. The use of Service Intensity Indexes to identify the resource needs of given NFs patient mix relative to the needs present in other NFs.

7. The development of Service Intensity Indexes based on:

a. Determination of resource indexes for each patient class that measures relative resource cost.

b. Determination of each NF's average relative resource cost index across all patients.

c. Standardizing the average relative resource cost indexes of each NF across all NF's.

8. The use of the DMAS Long Term Care Information System (LTCIS), assessment form (currently DMAS-95), Virginia Center on Aging Study, the State of Maryland Time and Motion Study of the Provision of Nursing Service in Long Term Care Facilities, and the KPMG Peat Marwick Survey of Virginia long-term care NF's nursing wages to determine the patient class system and resource indexes for each patient class.

9. The establishment of payment rates based on service intensity indexes.

§ 3-2. 12 VAC 30-90-131. Conditions for appeal.

An appeal shall not be heard until the following conditions are met:

1. Where appeals result from desk or field audit adjustments, the provider shall have received a notification of program reimbursement (NPR) in writing from the DMAS.

2. Any and all moneys due to DMAS shall be paid in full, unless a repayment plan has been agreed to by the Director of the Division of Cost Settlement and Audit.

3. All first level appeal requests shall be filed in writing with the DMAS within 90 business days following the date of a DMAS notice of program reimbursement that adjustments have been made to a specific cost report.

§ 3-3. 12 VAC 30-90-132. Appeal procedure.

A. There shall be two levels of administrative appeal.

B. Informal appeals shall be decided by the Director of the Appeals Division of Cost Settlement and Audit after an

informal fact finding conference is held. The decision of the Director of Cost Settlement and Audit the Appeals Division shall be sent in writing to the provider within 90 business days following conclusion of the informal fact finding conference.

C. If the provider disagrees with such initial decision the provider may, at its discretion, file a notice of appeal to the Director of the DMAS. Such notice shall be in writing and filed within 30 business days of the date of the initial decision.

D. Within 30 business days of the date of such notice of appeal, the director shall appoint a hearing officer to conduct the proceedings, to review the issues and the evidence presented, and to make a written recommendation.

E. The director shall notify the provider of his final decision within 30 business days of the date of the appointed hearing officer's written recommendation, or after the parties have filed exceptions to the recommendations, whichever is later, the time frames set for disposition of appeals in this subpart and the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia.

F. The director's final written decision shall conclude the provider's administrative appeal.

§ 3-4. ~~Formal hearing procedures.~~

G. Formal hearing procedures, as developed by DMAS, shall control the conduct of the formal administrative proceedings.

§ 3-5. 12 VAC 30-90-133. Appeals time frames.

Appeal time frames noted throughout this section may be extended for the following reasons;

A- 1. The provider submits a written request prior to the due date requesting an extension for good cause and the DMAS approves the extension.

B- 2. Delays on the part of the NF documented by the DMAS shall automatically extend DMAS's time frame to the extent of the time delayed.

C- 3. Extensions of time frames shall be granted to the DMAS for good cause shown.

D- 4. When appeals for multiple years are submitted by a NF or a chain organization or common owners are coordinating appeals for more than one NF, the time frames shall be reasonably extended for the benefit of the DMAS.

E- 5. Disputes relating to the time lines established in § 3-3 12 VAC 30-90-132 B or to the grant of extensions to the DMAS shall be resolved by application to the Director of the DMAS or his designee.

§ 3-6. 12 VAC 30-90-134. Dispute resolution for state-operated NFs.

A. Definitions.

"DMAS" means the Department of Medical Assistance Services.

"Division director" means the director of a division of DMAS.

"State-operated provider" means a provider of Medicaid services which is enrolled in the Medicaid program and operated by the Commonwealth of Virginia.

B. Right to request reconsideration.

1. A state-operated provider shall have the right to request a reconsideration for any issue which would be otherwise administratively appealable under the State Plan by a nonstate operated provider. This shall be the sole procedure available to state-operated providers.

2. The appropriate DMAS division must receive the reconsideration request within 30 business days after the date of a DMAS Notice of Amount of Program Reimbursement, notice of proposed action, findings letter, or other DMAS notice giving rise to a dispute.

C. Informal review. The state-operated provider shall submit to the appropriate DMAS division written information specifying the nature of the dispute and the relief sought. If a reimbursement adjustment is sought, the written information must include the nature of the adjustment sought; the amount of the adjustment sought; and the reasons for seeking the adjustment. The division director or his designee shall review this information, requesting additional information as necessary. If either party so requests, they may meet to discuss a resolution. Any designee shall then recommend to the division director whether relief is appropriate in accordance with applicable law and regulations.

D. Division director action. The division director shall consider any recommendation of his designee and shall render a decision.

E. DMAS director review. A state-operated provider may, within 30 business days after the date of the informal review decision of the division director, request that the DMAS Director or his designee review the decision of the division director. The DMAS Director shall have the authority to take whatever measures he deems appropriate to resolve the dispute.

F. Secretarial review. If the preceding steps do not resolve the dispute to the satisfaction of the state-operated provider, within 30 business days after the date of the decision of the DMAS Director, the provider may request the DMAS director to refer the matter to the Secretary of Health and Human Resources and any other cabinet secretary as appropriate. Any determination by such secretary or secretaries shall be final.

12 VAC 30-90-135. Reimbursement of legal fees associated with appeals having substantial merit.

A. The Department of Medical Assistance Services shall reimburse a nursing facility for reasonable and necessary legal fees associated with an informal or formal appeal brought pursuant to the Administrative Process Act, only if the nursing facility substantially prevails on the merit of the appeal. The term "substantially prevails" is defined as being successful on more than 50% of the issue as appealed and on more than 50% of the amount under appeal. The reimbursement of legal fees remains subject to the State Plan

for Medical Assistance and all existing ceilings. Any legal fees claimed must be supported by adequate, detailed, and verifiable documentation.

B. Subject to the requirements of subsection A of this section, the reimbursable legal fees will be included in the calculation of total allowable costs in the fiscal year the appeal process is concluded and Medicaid will reimburse the NF for its Medicaid proportionate share.

PART Subpart IV.
Individual Expense Limitation.

12 VAC 30-90-140. Individual expense limitation.

In addition to operating costs being subject to peer group ceilings, costs are further subject to maximum limitations as defined in ~~VR 460-03-4.1943~~ 12 VAC 30-90-290, Cost Reimbursement Limitations.

PART Subpart V.
Cost Report Preparation Instructions.

12 VAC 30-90-150. Cost report preparation instructions.

Instructions for preparing NF cost reports will be provided by the DMAS.

PART Subpart VI.
Stock Transactions.

~~§ 6.1.~~ *12 VAC 30-90-160. Stock acquisition; merger of unrelated and related parties.*

A. The acquisition of the capital stock of a provider does not constitute a basis for revaluation of the provider's assets. Any cost associated with such an acquisition shall not be an allowable cost. The provider selling its stock continues as a provider after the sale, and the purchaser is only a stockholder of the provider.

~~§ 6.2. Merger of unrelated parties.~~

A. B. In the case of a merger which combines two or more unrelated corporations under the regulations of the Code of Virginia, there will be only one surviving corporation. If the surviving corporation, which will own the assets and liabilities of the merged corporation, is not a provider, a Certificate of Public Need, if applicable, must be issued to the surviving corporation.

B. The nonsurviving corporation shall be subject to the policies applicable to terminated providers, including those relating to gain or loss on sales of NFs.

~~§ 6.3. Merger of related parties.~~

C. The statutory merger of two or more related parties or the consolidation of two or more related providers resulting in a new corporate entity shall be treated as a transaction between related parties. No revaluation shall be permitted for the surviving corporation.

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PART Subpart VII.

Nurse Aide Training and Competency Evaluation Program and Competency Evaluation Programs (NATCEPs).

~~§ 7.1. The Omnibus Budget Reconciliation Act of 1989. 12 VAC 30-90-170. NATCEPs costs.~~

A. The Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended § 1903(a)(2)(B) of the Social Security Act to fund actual NATCEPs costs incurred by NFs separately from the NF's medical assistance services reimbursement rates.

~~§ 7.2. NATCEPs costs.~~

A. B. NATCEPs costs shall be as defined in ~~VR 460-03-4.1944~~ 12 VAC 30-90-270.

B. C. To calculate the reimbursement rate, NATCEPs costs contained in the most recently filed cost report shall be converted to a per diem amount by dividing allowable NATCEPs costs by the actual number of NF's patient days.

C. D. The NATCEPs interim reimbursement rate determined in ~~§ 7.2-B subsection C of this section~~ shall be added to the prospective operating cost and plant cost components or charges, whichever is lower, to determine the NF's prospective rate. The NATCEPs interim reimbursement rate shall not be adjusted for inflation.

D. E. Reimbursement of NF costs for training and competency evaluation of nurse aides must take into account the NF's use of trained nurse aides in caring for Medicaid, Medicare and private pay patients. Medicaid shall not be charged for that portion of NATCEPs costs which are properly charged to Medicare or private pay services. The final retrospective reimbursement for NATCEPs costs shall be the reimbursement rate as calculated from the most recently filed cost report by the methodology in ~~§ 7.2-B subsection C of this section~~ times the Medicaid patient days from the DMAS MMR-240.

E. F. Disallowance of nonreimbursable NATCEPs costs shall be reflected in the year in which the nonreimbursable costs were claimed.

F. G. Payments to providers for allowable NATCEPs costs shall not be considered in the comparison of the lower allowable reimbursement or charges for covered services, as outlined in ~~§ 2.14~~ 12 VAC 30-90-55 A.

PART Subpart VIII.

Criminal Records Checks for Nursing Facility Employees.

~~§ 8.1. 12 VAC 30-90-180. Criminal records checks.~~

A. This section implements the requirements of § 32.1-126.01 of the Code of Virginia and Chapter 994 of the Acts of Assembly of 1993 (Item 313 T).

B. A licensed nursing facility shall not hire for compensated employment persons who have been convicted of:

1. Murder;
2. Abduction for immoral purposes as set out in § 18.2-48 of the Code of Virginia;

3. Assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia;

4. Arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 of the Code of Virginia;

5. Pandering as set out in § 18.2-355 of the Code of Virginia;

6. Crimes against nature involving children as set out in § 18.2-361 of the Code of Virginia;

7. Taking indecent liberties with children as set out in §§ 18.2-370 or 18.2-370.1 of the Code of Virginia;

8. Abuse and neglect of children as set out in § 18.2-371.1 of the Code of Virginia;

9. Failure to secure medical attention for an injured child as set out in § 18.2-314 of the Code of Virginia;

10. Obscenity offenses as set out in § 18.2-374.1 of the Code of Virginia; or

11. Abuse or neglect of an incapacitated adult as set out in § 18.2-369 of the Code of Virginia.

C. The provider shall obtain a sworn statement or affirmation from every applicant disclosing any criminal convictions or pending criminal charges for any of the offenses specified in subsection B of *this section* regardless of whether the conviction or charges occurred in the Commonwealth.

D. The provider shall obtain an original criminal record clearance or an original criminal record history from the Central Criminal Records Exchange for every person hired. This information shall be obtained within 30 days from the date of employment and maintained in the employees' files during the term of employment and for a minimum of five years after employment terminates for whatever reason.

E. The provider may hire an applicant whose misdemeanor conviction is more than five years old and whose conviction did not involve abuse or neglect or moral turpitude.

F. Reimbursement to the provider will be handled through the cost reporting form provided by the DMAS and will be limited to the actual charges made by the Central Criminal Records Exchange for the records requested. Such actual charges will be a pass-through cost which is not a part of the operating or plant cost components.

PART Subpart IX.

Use of MMR-240.

12 VAC 30-90-190. Use of MMR-240.

All providers must use the data from computer printout MMR-240 based upon a 60-day accrual period.

PART Subpart X.

Commingled Investment Income.

12 VAC 30-90-200. Commingled investment income.

DMAS shall treat funds commingled for investment purposes in accordance with PRM-15, § 202.6.

PART Subpart XI. Provider Notification.

~~2~~ VAC 30-90-210. Provider notification.

DMAS shall notify providers of State Plan changes affecting reimbursement 30 days prior to the enactment of such changes.

PART Subpart XII. Start-up Costs and Organizational Costs.

~~12.1.~~ 12 VAC 30-90-220. Start-up costs.

A. In the period of developing a provider's ability to furnish patient care services, certain costs are incurred. The costs incurred during this time of preparation are referred to as start-up costs. Since these costs are related to patient care services rendered after the time of preparation, they shall be capitalized as deferred charges and amortized over a 60-month time frame.

B. Start-up costs may include, but are not limited to, administrative and nursing salaries; heat, gas, and electricity; taxes, insurance; employee training costs; repairs and maintenance; housekeeping; and any other allowable costs incident to the start-up period. However, any costs that are properly identifiable as operating costs must be appropriately classified as such and excluded from start-up costs.

C. Start-up costs that are incurred immediately before a provider enters the Program and that are determined by the provider, subject to the DMAS approval, to be immaterial and not be capitalized but rather may be charged to operations in the first cost reporting period.

D. Where a provider incurs start-up costs while in the program and these costs are determined by the provider, subject to the DMAS approval, to be immaterial, these costs shall not be capitalized but shall be charged to operations in the periods incurred.

~~12.2.~~ Applicability. 12 VAC 30-90-221. Time frames.

A. Start-up cost time frames.

1. Start-up costs are incurred from the time preparation begins on a newly constructed or purchased building, wing, floor, unit, or expansion thereof to the time the first patient (whether Medicaid or non-Medicaid) is admitted for treatment, or where the start-up costs apply only to nonrevenue producing patient care functions or nonallowable functions, to the time the areas are used for their intended purposes.

2. If a provider intends to prepare all portions of its entire facility at the same time, start-up costs for all portions of the facility shall be accumulated in a single deferred charge account and shall be amortized when the first patient is admitted for treatment.

3. If a provider intends to prepare portions of its facility on a piecemeal basis (i.e., preparation of a floor or wing of a provider's facility is delayed), start-up costs shall be capitalized and amortized separately for the portion or portions of the provider's facility prepared during different time periods.

4. Moreover, if a provider expands its NF by constructing or purchasing additional buildings or wings, start-up costs shall be capitalized and amortized separately for these areas.

B. Depreciation time frames.

1. Costs of the provider's facility and building equipment shall be depreciated using the straight line method over the lives of these assets starting with the month the first patient is admitted for treatment.

2. Where portions of the provider's NF are prepared for patient care services after the initial start-up period, those asset costs applicable to each portion shall be depreciated over the remaining lives of the applicable assets. If the portion of the NF is a nonrevenue-producing patient care area or nonallowable area, depreciation shall begin when the area is opened for its intended purpose. Costs of major movable equipment, however, shall be depreciated over the useful life of each item starting with the month the item is placed into operation.

~~§ 12.3.~~ 12 VAC 30-90-222. Organizational costs.

A. Organizational costs are those costs directly incident to the creation of a corporation or other form of business. These costs are an intangible asset in that they represent expenditures for rights and privileges which have a value to the enterprise. The services inherent in organizational costs extend over more than one accounting period and thus affect the costs of future periods of operations.

B. Allowable organizational costs shall include, but not be limited to, legal fees incurred in establishing the corporation or other organization (such as drafting the corporate charter and by-laws, legal agreements, minutes of organizational meeting, terms of original stock certificates), necessary accounting fees, expenses of temporary directors and organizational meetings of directors and stockholders and fees paid to states for incorporation.

C. The following types of costs shall not be considered allowable organizational costs: costs relating to the issuance and sale of shares of capital stock or other securities, such as underwriters fees and commissions, accountant's or lawyer's fees, cost of qualifying the issues with the appropriate state or federal authorities, stamp taxes, etc.

D. Allowable organization costs shall generally be capitalized by the organization. However, if DMAS concludes that these costs are not material when compared to total allowable costs, they may be included in allowable indirect operating costs for the initial cost reporting period. In all other circumstances, allowable organization costs shall be amortized ratably over a period of 60 months starting with the month the first patient is admitted for treatment.

PART Subpart XIII. DMAS Authorization.

~~§ 13.1.~~ 12 VAC 30-90-230. Access to records.

A. DMAS shall be authorized to request and review, either through a desk or field audit, all information related to the provider's cost report that is necessary to ascertain the

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propriety and allocation of costs (in accordance with Medicare and Medicaid rules, regulations, and limitations) to patient care and nonpatient care activities.

B. Examples of such information shall include, but not be limited to, all accounting records, mortgages, deeds, contracts, meeting minutes, salary schedules, home office services, cost reports, and financial statements.

C. This access also applies to related organizations as defined in ~~§ 2.10~~ 12 VAC 30-90-51 who provide assets and other goods and services to the provider.

~~PART Subpart XIV.~~ Home Office Costs.

~~§ 14.1. General.~~ 12 VAC 30-90-240. Home office costs.

A. Home office costs shall be allowable to the extent they are reasonable, relate to patient care, and provide cost savings to the provider.

~~§ 14.2. Purchases.~~

B. Provider purchases from related organizations, whether for services, or supplies, shall be limited to the lower of the related organizations actual cost or the price of comparable purchases made elsewhere.

~~§ 14.3. Allocation of home office costs.~~

C. Home office costs shall be allocated in accordance with § 2150.3, PRM-15.

~~§ 14.4. Nonrelated management services.~~

D. Home office costs associated with providing management services to nonrelated entities shall not be recognized as allowable reimbursable cost.

~~§ 14.5. Allowable and nonallowable home office costs.~~

E. Allowable and nonallowable home office costs shall be recognized in accordance with § 2150.2, PRM-15.

~~§ 14.6. Equity capital.~~

F. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers for periods or portions thereof on or after July 1, 1987.

~~PART Subpart XV.~~ Refund of Overpayments.

~~§ 15.4.~~ 12 VAC 30-90-250. Lump sum payment.

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

~~§ 15.2.~~ 12 VAC 30-90-251. Offset.

If the provider has been overpaid for a particular fiscal year and has been underpaid for another fiscal year, the underpayment shall be offset against the overpayment. So

long as the provider has an overpayment balance, any underpayments discovered by subsequent review or audit shall be used to reduce the balance of the overpayment.

~~§ 15.3.~~ 12 VAC 30-90-252. Payment schedule.

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

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

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

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

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

~~§ 15.4.~~ 12 VAC 30-90-253. Extension request documentation.

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

~~§ 15.5.~~ 12 VAC 30-90-254. Interest charge on extended repayment.

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

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

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

PART Subpart XVI.
Revaluation of Assets.

§ 46-4. 12 VAC 30-90-260. Change of ownership.

A. Under the Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, reimbursement for capital upon the change of ownership of a NF is restricted to the lesser of:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year, or
2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U) applied in the aggregate with respect to those facilities that have undergone a change of ownership during the fiscal year.

B. To comply with the provisions of COBRA 1985, effective October 1, 1986, the DMAS shall separately apply the following computations to the capital assets of each facility which has undergone a change of ownership:

1. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership), in the Dodge Construction Cost Index, or
2. One-half of the percentage increase (as measured from the date of acquisition by the seller to the date of the change of ownership) in the Consumer Price Index for All Urban Consumers (CPI-U).

C. Change of ownership is deemed to have occurred only when there has been a bona fide sale of assets of a NF (See ~~§ 2-5~~ 12 VAC 30-90-34 B 3 for the definition of "bona fide" sale).

D. Reimbursement for capital assets which have been revalued when a facility has undergone a change of ownership shall be limited to the lesser of:

1. The amounts computed in subsection B above;
2. Appraised replacement cost value; or

3. Purchase price.

E. Date of acquisition is deemed to have occurred on the date legal title passed to the seller. If a legal titling date is not determinable, date of acquisition shall be considered to be the date a certificate of occupancy was issued by the appropriate licensing or building inspection agency of the locality where the nursing facility is located.

NOTICE: The forms used in administering the Department of Medical Assistance Services Regulations are not being published due to the large number; however, the name of each form is listed below. The forms are available for public inspection at the Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

Cost Reporting Forms (PIRS 1090 Series)
Effective 7-1-93

Facility Description and Statistical Data, Schedule A
 Certification by Officer or Administrator of Provider, Schedule A-2
 Reclassification and Adjustment of Trial Balance of Expenses, Schedule B
 Reclassifications, Schedule B-1
 Analysis of Administrative and General - Other, Schedule B-2
 Adjustment to Expenses, Schedule B-4
 Cost Allocation - Employee Benefits, Schedule B-5, Part I
 Cost Allocation - Employee Benefits Statistical Basis, Schedule B-5, Part II
 Computation of Title XIX Direct Patient Care Ancillary Service Costs, Schedule C
 Statement of Cost of Services from Related Organizations, Schedule D
 Statement of Compensation of Owners, Schedule E
 Statement of Compensation of Administrators and/or Assistant Administrators, Schedule F
 Balance Sheet, Schedule G
 Statement of Patient Revenues, Schedule G-1
 Statement of Operations, Schedule G-2
 Computation of Title XIX Base Costs and Prospective Reimbursement Rate, Schedule H, Part I
 Computation of Prospective Direct and Indirect Patient Care Profit Incentive Rates, Schedule H-1
 Calculation of Medical Service Reimbursement Settlement, Schedule J
 Computation of Nursing Facility Medical Service Potential Prospective Reimbursement, Schedule J, Part II
 Settlement Computations, Schedule J, Part III
 Analysis of Nursing Facility Interim Payments for Title XIX Services, Schedule J, Part IV
 Analysis of Quarterly Title XIX Patient Days, Schedule J, Part V
 Accumulation of Title XIX Charges, Schedule J, Part VI
 Calculation of NATCEPs Reimbursement Settlement, Schedule J-1
 Calculation of Criminal Record Check Costs Reimbursement, Schedule J-2
 Debt and Interest Expense, Schedule K

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Limitation on Federal Participation for Capital Expenditures Questionnaire, Schedule L
Nurse Aide Training and Competency Evaluation Program Costs and Competency Evaluation Programs (NATCEPs) Schedule N

DOCUMENTS INCORPORATED BY REFERENCE

R.S. Means Building Construction Data, "Location Factor."
Estimated Useful Lives of Depreciable Assets, American Hospital Association.
Cragie Incorporated Municipal Finance Newsletter.
Federal Reserve Statistical Release (H. 15).
Provider Reimbursement Manual, HCFA-Pub. 15 (PRM-15), Health Care Financing Administration.
Skilled Nursing Facility Market Basket of Routine Service Costs, Data Resources.
Nursing Facility Reimbursement Report, MMR-240, Department of Medical Assistance Services

VA.R. Doc. No. R96-139; Filed December 6, 1995, 11:45 a.m.

Title of Regulation: VR 460-04-2.2100 [12 VAC 30-110-1200 through 12 VAC 30-110-1240]. Part VII, Medical Assistance Eligibility Resulting from Welfare Reform.

Statutory Authority: §§ 32.1-325 and 63.1-133.46 of the Code of Virginia.

Public Hearing Date: N/A - Written comments may be submitted until February 23, 1996.

(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. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of board action pursuant to the board's requirements. The Code also provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency is initiating the public notice and comment process contained in Article 2 of the APA. The emergency regulation became effective on July 1, 1995. The Code, at § 9-6.14:4.1(C) requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on August 21, 1995.

The Commonwealth has applied for the necessary waiver of § 1902(a)(1) of the Social Security Act pertaining to the statewide availability of services. Waiver of this section will allow the Commonwealth to implement transitional medical

assistance on a phased-in basis over a four-year period concurrently with the employment and time-limit provisions of HB 2001 (Chapter 450, 1995 Acts).

Section 63.1-133.46 of the Code of Virginia, as amended by HB 2001, mandated up to 12 months of medical assistance to individuals whose AFDC is terminated, including individuals whose AFDC is terminated because of increased earnings from employment. However, § 1925 of the Social Security Act mandates up to 12 months of transitional assistance only for individuals who lose AFDC benefits because of increased earnings from employment and who received AFDC in three of the preceding six months. The Commonwealth has applied for the necessary § 1115(a)(2) waiver to extend transitional medical assistance beyond the limits of the mandate in § 1925 of the Social Security Act. Federal approval of this waiver grants the Commonwealth the authority to extend transitional assistance to individuals who lose AFDC for reasons other than increased earnings and who have not received AFDC for the required three months in the preceding six months.

In its original 1115(a)(2) waiver application, the Commonwealth requested the authority to terminate transitional medical assistance during the first six months of the 12-month extension period when the family income exceeds 185% of the federal poverty level or if insurance is available through their employer. These provisions were required as part of HB 2001. Because these two provisions are more restrictive than the requirements of § 1925, the U.S. Secretary of Health and Human Services does not have the authority to approve these provisions. Section 1925 of the Social Security Act requires a 185% income test only in the second six months of the 12-month extension period; no income test may be applied to the first six months. Individuals who lose AFDC are automatically eligible for the first six months regardless of their earnings.

Also, HB 2001 requires the denial or termination of transitional medical assistance if an individual has medical insurance available through his employer. However, there is no authority in § 1925 to deny transitional medical assistance to individuals solely because they have insurance available through an employer. Instead, the federal law requires, as a condition of eligibility, that an individual apply for any employer-based coverage for which they are eligible. Because the state legislation contradicts federal legislation, the Commonwealth must comply with the federal legislation. Therefore, the availability of employer-based medical insurance will not result in loss of transitional medical assistance, but failure to apply for that insurance will.

Purpose: The purpose of this proposal is to provide transitional medical assistance benefits to individuals who lose AFDC cash assistance as mandated by 1995 HB 2001.

Summary and Analysis: The 1995 session of the Virginia General Assembly enacted House Bill 2001 (HB 2001) which enables Virginia to implement the Virginia Independence Program (VIP). VIP is a comprehensive, statewide welfare reform program which changes Aid to Families With Dependent Children (AFDC) cash assistance from a permanent to a temporary form of assistance to be provided while individuals prepare for self-sufficiency. The goals of VIP are to reduce long-term dependence on welfare, to

emphasize personal responsibility, and to enhance opportunities for personal initiative and self-sufficiency by promoting the value of work. A major part of this welfare reform initiative is VIP's employment component, the Virginia Initiative for Employment not Welfare (VIEW). VIEW is a work program to be implemented statewide on a four-year, phased-in basis which will promote self-reliance, self-improvement and personal responsibility, and will be required for those families who cannot be diverted from the receipt of ongoing cash assistance. While HB 2001 includes major revisions to AFDC eligibility and establishes work requirements and time limited assistance for a portion of the AFDC population, a number of the provisions apply to all AFDC recipients and some provisions affect eligibility for and receipt of medical assistance.

Several of the provisions of HB 2001 require waivers from the mandates of public assistance programs that must be approved by the U.S. Department of Health and Human Services. The Welfare Reform provisions of HB 2001 were required to be implemented on either July 1, 1995, or the effective date of approval of the federal waivers, whichever date is later. Regardless of the implementation date, HB 2001 mandates that necessary regulations be promulgated within 280 days of enactment of the legislation. Because the Medicaid provisions of House Bill 2001 must be implemented concurrently with the Welfare Reform provisions in the AFDC program, the Medicaid provisions, which are not exempt under § 9-6.14.4.1(C)(4)(a), must also meet the 280-day promulgation requirement.

Currently, under federal legislation, individuals who lose AFDC benefits because of increased earnings from employment are entitled to up to 12 months of Medicaid as long as they continue to have a dependent child residing in the household throughout the period, the family makes required periodic reports of income, and the family's gross income does not exceed 185% of the federal poverty income guideline. HB 2001 extends this transitional medical assistance to individuals who lose AFDC for reasons other than increased earnings from employment. HB 2001 provides that a former AFDC recipient may continue to receive Medicaid-covered services for up to 12 months after the termination of AFDC benefits, regardless of the reason for the termination, if they do not have health insurance available from their employer and their family income does not exceed 185% of the federal poverty income guideline.

In addition, HB 2001 provides that an individual who becomes ineligible for AFDC because of noncompliance with school attendance laws shall continue to be regarded as an AFDC recipient for purposes of Medicaid eligibility. Because these individuals continue to be considered AFDC recipients, these individuals are covered under Medicaid regulations already in effect, so they are not covered under the transitional benefits policy described in these regulations.

Issues: The advantage of this regulatory action will be to expand Medicaid protection for a transitional period of up to 12 consecutive months to ensure that families who leave cash assistance continue to have medical assistance coverage as they move from welfare dependency to self-reliance. Continued medical assistance coverage is

important to families just entering the work force and possibly into jobs that do not initially provide health care coverage.

These regulations only affect those families who received AFDC as participants in the Virginia Initiative for Employment not Welfare (VIEW) initiative, but who no longer receive AFDC cash assistance due to increased income, excess resources, the two year AFDC time limit, etc. Without this regulation, these families could lose their medical assistance coverage, which could prevent them from accessing medically necessary services and result in an imminent threat to their health.

There are no anticipated disadvantages for the public, the agency or the regulated entities. Medicaid providers will not be directly affected by these regulations because reimbursement or services coverage will not be affected. The agency projects no negative issues involved in implementing this proposed change.

Fiscal/Budget Impact: DMAS does not anticipate a significant fiscal impact related to these welfare reforms as enacted by the 1995 Appropriations Act. The reforms allow recipients to continue receiving AFDC benefits for the next two years, and provide for one year of transitional Medicaid benefits after they are no longer receiving AFDC.

The Department of Planning and Budget based its overall cost estimates on the assumption that all individuals currently receiving AFDC benefits would likely participate in the welfare reform program and would continue to receive AFDC benefits through FY 97. Significant Medicaid savings will likely not accrue until FY 99, because those eligible recipients whose AFDC benefits are terminated after two years from the enactment of VIP may receive Medicaid benefits for the one year transitional period.

These regulations will impact only those individuals affected by the Virginia Independence Program (VIP) as defined in HB 2001. The VIEW portion of the VIP program will be phased-in over the next four years. The provisions of these regulations relating to transitional medical assistance will become effective in the areas of the Commonwealth in which VIEW is implemented. Only AFDC recipients residing in those areas will be affected.

Medicaid providers will not be directly affected by these regulations because Medicaid reimbursement or service coverage will not be affected. There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected number of persons and employment positions to be affected; and the projected costs to affected businesses or entities to implement or comply with

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the regulation. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

Currently, under certain circumstances, individuals whose benefits under Aid to Families with Dependent Children (AFDC) have been terminated are entitled to up to 12 months of medical assistance under Medicaid. House Bill 2001, enacted in the 1995 session of the Virginia General Assembly, mandates extension of the circumstances under which these transitional medical benefits are provided. The proposed regulation provides for these extensions.

Estimated Economic Impact

The economic impact of the proposed regulation cannot be properly considered outside of the economic impact of the Virginia Independence Program (VIP) with which it is associated. Medicaid savings from VIP will start to be realized in FY 1999 as former AFDC recipients are phased out of Medicaid. Recent estimates from DPB indicate that these savings will be approximately \$4,143,000 in FY 1999, \$9,897,000 in FY 2000, \$13,144,200 in FY 2001, and \$11,168,600 in FY 2002. These estimates are based on the following assumptions:

A phase out of former AFDC recipients from Medicaid of 6,905 in FY 1999, 9,590 in FY 2000, 12,317 in FY 2001, and 7,964 in FY 2002.

A Medicaid cost savings of \$50 per month per recipient.

Although the primary economic impact of the proposed regulation is to forestall by one year the capture of these Medicaid savings, this impact must be weighed against the benefits derived from smoothing the transition of AFDC recipients into the VIP program.

The regulation is anticipated to have no other significant economic impacts.

Projected Number of Businesses or Other Entities to Whom the Regulation will Apply

The proposed regulation will affect the approximately 37,000 former AFDC recipients who will be phased out of Medicaid between FY 1999 and FY 2002.

Localities and Types of Businesses Particularly Affected

No localities are particularly affected by this proposed regulation.

Projected Number of Persons and Employment Positions Affected

The regulation is not anticipated to have a measurable effect on employment.

Projected Costs to Affected Businesses or Entities

No additional costs are anticipated.

Agency Response to Economic Impact Analysis:

The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Medical Assistance Eligibility Resulting from Welfare Reform.

Summary:

This regulation provides transitional medical assistance benefits to individuals who lose AFDC cash assistance as mandated by Chapter 450, 1995 Acts of Assembly.

12 VAC 30-110-1200 through 12 VAC 30-110-1240. Part VII, Medical Assistance Eligibility Resulting from Welfare Reform.

PART VII.

MEDICAL ASSISTANCE ELIGIBILITY RESULTING FROM WELFARE REFORM.

12 VAC 30-110-1200. Definitions.

The following words and terms, when used in this part, shall have the following meanings unless the context indicates otherwise:

"Aid to Families with Dependent Children" or "AFDC" means the public assistance programs authorized in §§ 406 and 407 of the Social Security Act and administered by the Virginia Department of Social Services. The term "AFDC" as used in this part includes Aid to Families with Dependent Children - Unemployed Parent (AFDC-UP).

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance as defined in the Virginia Department of Social Services' Virginia Independence Program regulations (22 VAC 40-35-10 et seq.).

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR § 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Child" means an individual who would be considered a child under the AFDC State Plan.

"Family" means those individuals living in the household whose needs and income were included in determining the AFDC eligibility of the assistance unit at the time that the AFDC benefits were terminated and individuals under AFDC sanction whose income but not needs were included. It also includes those individuals whose needs and income would be taken into account in determining the AFDC eligibility of the caretaker-relative's assistance unit under the AFDC State Plan if the family were applying in the current month.

"Family income" means all the earned income, as defined in the AFDC State Plan, of all the members of the family without application of any disregards except the family's cost of child care necessary for the employment of the caretaker-relative or those disregards required by another federal statute.

"Transitional medical assistance" means extended medical assistance to participants in VIEW whose AFDC has been terminated voluntarily or involuntarily.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

12 VAC 30-110-1210. Twelve-month extension of eligibility for medical assistance.

A. *Requirements.* Notwithstanding any provision of the State Plan for Medical Assistance, each family which was receiving AFDC as a participant in VIEW immediately preceding the month in which such family becomes ineligible for AFDC shall, subject to these provisions and without any reapplication for benefits, remain eligible for medical assistance for up to 12 consecutive months immediately succeeding AFDC termination. Individuals who have been eligible for the entire first six months may be eligible for continuation of transitional medical assistance for the second six months if they meet the additional eligibility requirements listed in subdivision C 2 of this section.

B. *Notice of benefits.* In the notice of termination of AFDC benefits sent to a family meeting the requirements of subsection A of this section, the local department of social services shall notify the family of its right to transitional medical assistance and include in such notice a description of the reporting requirements of 12 VAC 30-110-1230 B and the circumstances described in this section under which such transitional assistance may be terminated.

C. *Eligibility for medical assistance under VIEW.*

1. *First six-month period.* A participant of VIEW whose AFDC is terminated, either voluntarily or involuntarily, shall receive medical assistance, including transitional medical assistance for families with a working parent who becomes ineligible for AFDC financial assistance because of increased earnings, unless:

- a. The family ceases to include a child, or
- b. The caretaker-relative refuses to apply for health coverage offered by an employer as provided in 12 VAC 30-110-1220 B.

2. *Second six-month period.* For families who received medical assistance during the entire first six-month period under subdivision C 1 of this section, the following applies.

a. Subject to subdivisions 2 b and c of this subsection, assistance to a family during the second six-month period shall terminate at the close of the first month in which:

- (1) No child resides with the family, whether or not the child is (or would, if needy, be) a dependent child under AFDC;
- (2) The family income exceeds 185% of the federal poverty level during the immediately preceding three-month period;
- (3) The caretaker-relative fails to meet the reporting requirements specified in 12 VAC 30-110-1230 B. Medical assistance under this provision shall terminate at the close of the sixth, eighth or eleventh month of the 12-month period if the family fails to make the required report to the local department of social services, by the deadline specified in 12 VAC 30-110-1230 B, unless the family has established good cause for the failure to report on a timely basis.

b. *Written notice before termination.* No termination of assistance under these provisions shall become effective until the local department of social services provides the family with notice of the grounds for the termination.

c. *Continuation in certain cases until redetermination.*

(1) If a child is ineligible to receive transitional medical assistance under this section, but may be eligible for assistance under the State Plan for Medical Assistance because the child is described in clause (i) of § 1905(a) of the Social Security Act or clause (i)(IV), (i)(VI), (i)(VII), or (ii)(IX) of § 1902(a)(10)(A) of the Social Security Act, the local department of social services shall not discontinue transitional medical assistance until that department has determined that the child is ineligible for medical assistance under the State Plan for Medical Assistance.

(2) If an individual ceases to receive transitional medical assistance under this section, but may be eligible for medical assistance under the State Plan for Medical Assistance because the individual is within a category of person for which medical assistance under the State Plan for Medical Assistance is available under § 1902(a)(10)(A) or (C) of the Social Security Act, the local department of social services shall not discontinue transitional assistance until that department determines that the individual is ineligible for medical assistance under the State Plan for Medical Assistance.

12 VAC 30-110-1220. Scope of coverage.

A. Subject to subsection B of this section, during the 12-month extension period, the amount, duration, and scope of medical assistance made available to a family shall be the same as if the family were still receiving AFDC.

B. The Department of Medical Assistance Services (DMAS), at its option may, pursuant to the requirements of the Health Insurance Premium Payment Program (HIPP) in Part XII (12 VAC 30-130-740 et seq.) of 12 VAC 30-130, pay a family's expenses for premiums, deductibles, coinsurance, and similar costs for health insurance or other health care coverage offered by an employer of the caretaker-relative or by an employer of the absent parent of a dependent child. If an employer offers such coverage to the caretaker-relative:

1. To receive transitional medical assistance coverage for himself and his family, the caretaker-relative shall make application for such employer coverage, but only if:

- a. The employer does not require the caretaker-relative to make financial contributions for the coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise); and
- b. DMAS provides, directly or otherwise, payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

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2. DMAS treats the coverage under the employer plan as a third party liability (as of May 1, 1995, under § 1902(a)(25) of the Social Security Act).

C. DMAS shall consider payments for premiums, deductibles, coinsurance, and similar expenses as payments for medical assistance.

12 VAC 30-110-1230. Written notice and reporting requirements.

A. Notices. During the third, sixth and ninth months of any transitional assistance DMAS shall notify the family of the reporting requirements.

B. Reporting requirements. To receive continued transitional medical assistance, a family shall report the following to the local department of social services, not later than the 21st day of the fourth, seventh, and tenth month in the period of transitional assistance: the family's gross monthly earnings and the family's costs for child care necessary for the employment of the caretaker-relative in each month of the preceding three-month period. The local department of social services may permit continued transitional medical assistance, notwithstanding a failure to report, if the family has established good cause for the failure to report on a timely basis.

C. Good cause. The local department of social services may grant an extension regarding the reporting requirements for good cause shown, pursuant to the Medicaid Client Appeals regulations at Part I (12 VAC 30-110-10 et seq.) of this chapter.

D. Frequency of reporting. A family receiving transitional assistance shall not be required to report more frequently than as required under subsection B of this section.

E. Notice before termination. No termination of assistance shall become effective until the local department of social services provides the family with notice of the grounds for the termination. No termination shall be effective earlier than 10 days after the date of mailing of the notice.

12 VAC 30-110-1240. Appeals.

All appeals regarding the provision of services under this part shall be conducted pursuant to the Medicaid Client Appeals regulations at Part I (12 VAC 30-110-10 et seq.) of this chapter.

VA.R. Doc. No. R96-141; Filed December 6, 1995, 11:49 a.m.

Title of Regulation: ~~VR-460-04-8-14~~ 12 VAC 30-120-260 through 12 VAC 30-120-350. Part V, MEDALLION.

Statutory Authority: § 32.1-325 of the Code of Virginia and Item 396 R of the 1995 Appropriations Act.

Public Hearing Date: N/A -- Written comments may be submitted until February 23, 1996.

(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. Section 32.1-324 of the Code of Virginia grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) §§ 9-6.14:7.1 and 9-6.14:9.1, for this agency's promulgation of proposed regulations subject to the Governor's review.

The 1995 Appropriations Act requires DMAS to expand mandatory enrollment in the MEDALLION program to all Medicaid recipients, including aged, blind, and disabled recipients who do not receive Medicare or participate in community-based waiver programs. The provision required this expansion to be effective July 1, 1995.

Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency is promulgating permanent regulations based on the appropriate requirements of the APA. The emergency regulation became effective on July 1, 1995. The Code, at § 9-6.14:4.1 C, requires the agency to publish the Notice of Intended Regulatory Action within 60 days of the effective date of the emergency regulation if it intends to promulgate a permanent replacement regulation. The Notice of Intended Regulatory Action for this regulation was published in the Virginia Register on August 21, 1995.

Purpose: The purpose of this proposal is to expand mandatory enrollment in the MEDALLION program to aged, blind, and disabled recipients based on the 1995 Appropriations Act.

Summary and Analysis: The Virginia managed care program, MEDALLION, operates under a waiver of § 1915(b)(1) of the Social Security Act, which provides for primary care case management. The waiver provides for continuity of care, reduced costs, promotion of the recipient's compliance and responsibility when accessing medical care, promotion of the educational and preventive aspects of health care, and assurance of adequate access to quality care for Medicaid recipients. The waiver allows Medicaid recipients to select a primary care physician (PCP) who provides, through an ongoing patient/physician relationship, primary care services and referral for all necessary specialty services.

The PCP assists the recipient in gaining access to the health care system and monitors on an ongoing basis the recipient's condition and health care needs. The PCP is responsible for locating, coordinating, and monitoring all primary care and other medical and rehabilitation services on behalf of recipients enrolled in the waiver program. The types of primary care providers enrolled in the waiver program are general and family practice physicians, pediatricians, internal medicine physicians, obstetricians and gynecologists, health departments, rural health centers and Federally Qualified Health Centers (FQHC), specialists now involved in primary care, and other specialists who agree to all the requirements of a PCP and serve special needs clients on a case-by-case basis.

Recipients enrolled in MEDALLION are restricted to services included under the waiver, and the services must be provided by their PCP or another qualified provider to whom the recipient was referred by the PCP. The current waiver applies only to recipients in these categories: Aid to Families with Dependent Children (AFDC); AFDC-related; and the medically needy, non spend-down.

Based on a requirement of the 1995 Appropriations Act, DMAS must expand the provisions of the waiver to include the aged, blind and disabled (ABD) who are not Medicare eligible and are non-institutionalized. Expanding MEDALLION to the designated ABD recipients will allow these individuals to receive the benefits of coordinated care and increased access to care. In addition, these recipients have not previously been afforded the opportunity to have their own primary care provider. MEDALLION ensures assignment to a PCP by either the recipient's choice or by assignment if the recipient elects not to choose a provider.

Persons excluded from participating in the program are recipients receiving Medicare or personal care services; recipients residing in mental hospitals or skilled nursing facilities; recipients in foster care, subsidized adoptions, spend-down, or other waived community-based care programs; refugees; recipients with other medical insurance; and those recipients whose participating physicians have refused to enroll in MEDALLION.

Services that are exempt from PCP authorization are dental services (dental services are provided only to persons under 21), EPSDT and immunization services provided through health departments, emergency room services, psychiatric/psychological services, pregnancy and pregnancy-related services, family planning services, routine newborn services, annual or routine vision examinations, pharmacy services, nursing home and ICF/MR services, and durable medical equipment. These services will continue to be received from any Medicaid provider.

Providers enrolled as MEDALLION PCPs must follow the guidelines of the Provider Agreement addendum or may be sanctioned in accordance with 12 VAC 30-120-350. Violations which can result in a sanction include, but are not limited to, inappropriate service delivery. Sanctions include termination of the PCP's enrollment by DMAS, suspension of new enrollment, withholding of management fee payments, or DMAS-initiated disenrollment.

Issues: Since the implementation of Virginia's Medicaid managed care program in 1991, access to health care for Medicaid participants has increased and the quality of care has improved. As of March 1, 1995, 53,000 recipients were identified as meeting the eligibility requirements for MEDALLION in the ABD category. Of this number, 22,650 have used providers that are currently enrolled in MEDALLION; 21,277 have used non-MEDALLION providers; and 9,178 have not seen a provider in the last 12 months.

Many of the non-MEDALLION providers identified are internal medicine physicians who may either be involved in the provision of primary care or the provision of subspecialty care. Because the majority of recipients have seen, within the last 12 months, either a primary care provider or an internal medicine subspecialist who has training in primary

care, these recipients should experience a smooth entry into MEDALLION. However, for some recipients who have traditionally seen multiple specialty providers without the involvement of a primary care provider, there will be a period of adjustment to and understanding of the concept of managed care. To facilitate the adjustment to managed care, DMAS has provided notification to providers and recipients, held public forums, and attempted to disseminate information as early and clearly as possible.

Fiscal/Budget Impact: MEDALLION primary care providers are general and family practice physicians, pediatricians, internal medicine physicians, and obstetricians and gynecologists, health departments, rural health centers, Federally Qualified Health Centers (FQHC), specialists not involved in primary care, and other specialists who agree to provide primary care services. MEDALLION PCPs agree to provide 24-hour coverage for those clients assigned to them. Reimbursement for providers is based on a fee-for-service methodology and a \$3.00 management fee per month for each enrolled MEDALLION client. Providers should not be affected because they will continue to be reimbursed on a fee-for-service basis. The number of providers affected will be determined by how many providers choose to enroll as PCPs. The department is continuing to enroll providers to ensure adequate availability of services across the state. ABD recipients who are eligible for copayments are required to pay the designated amount at the time of service. This requirement is consistent with the current Medicaid policy regarding copayments.

The 1995 Appropriations Act requires DMAS to expand MEDALLION coverage to aged, blind and disabled recipients for a cost savings in FY 1996 of (\$355,000) GF, (\$355,000) NGF. This cost savings includes a reduction in inpatient hospitalization by 0.5% and in all other medical services by 1.5% for the affected population.

There are no localities which are uniquely affected by these regulations as they apply statewide.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 9-6.14:7.1 G of the Administrative Process Act and Executive Order Number 13 (94). Section 9-6.14:7.1 G requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected; the projected number of persons and employment positions to be affected; and the projected costs to affected businesses or entities to implement or comply with the regulation. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the Proposed Regulation

The MEDALLION Program operates under a waiver of the federal Social Security Act. The purpose of the program is to provide primary care physician (PCP) case management for Medicaid recipients. The current waiver applies only to certain categories of Medicaid recipients. Provisions of the federal 1995 Appropriations Act, however, require expansion

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of the program to include all Medicaid recipients who are not Medicare eligible, institutionalized, or participating in community-based waiver programs. The purpose of the proposed regulation is to expand mandatory enrollment in the MEDALLION program in compliance with these provisions.

Estimated Economic Impact

There are at least two likely economic impacts associated with the proposed regulation. The first is an anticipated reduction in the cost of providing health care for Medicaid recipients not previously enrolled in the MEDALLION program. This anticipation is based on a prior study of cost and use in Virginia's MEDALLION program (see Williamson Institute, "Final Report of the Second Year Evaluation of the MEDALLION Program," February, 1994). This study found that MEDALLION was associated with a 7.7% reduction in average medical costs for Medicaid recipients. This finding is consistent with the experience of other states. According to a recent analysis of 25 similar state programs conducted by Robert E. Hurley, Deborah A. Freund, and John E. Paul (see *Managed Care in Medicaid*, Health Administration Press, 1993), the majority of states instituting such programs reported subsequent reductions in average medical costs for recipients.

The cost savings associated with conversion of Medicaid recipients to PCP managed health care systems is attributed to two primary factors. First, the continuity in the doctor patient relationship occasioned by PCP managed care systems enables the primary care physician to more proficiently recognize and treat a patient's medical problems. Because the primary care physician has a history with the patient, he or she is more familiar with the patient's needs. Second, the traditional reliance of most Medicaid recipients on emergency room services for primary medical care is replaced with a reliance on the services of the primary care physician. Because emergency room services are relatively more expensive, reduced reliance on these services reduces costs.

Because the previous study of cost and use in Virginia's MEDALLION program dealt with different classes of recipients than those that will be added to the program by the proposed regulation, the reduction in cost determined by that study is not directly applicable. Informed estimates provided by DMAS, however, indicate that medical costs for affected Medicaid recipients will likely be reduced 0.5% for inpatient hospitalization and 1.5% for all other medical services. Such reductions amount to a \$710,000 reduction in costs for FY 1996.

The second likely economic impact of the proposed regulation has to do with the health benefits associated with an anticipated increase in the level of care provided to Medicaid recipients in the MEDALLION program. This anticipation is based on studies of similar programs in other states which showed that the continuous patient-provider relationships inherent in PCP managed care systems were associated with better doctor-patient communication and improved patient compliance with prescribed medical treatments (see *Managed Care in Medicaid*, Health Administration Press, 1993). Although it would be difficult and expensive to provide an exact dollar figure for these benefits, they nonetheless bear consideration.

The regulation is anticipated to have no other significant economic impacts.

Projected Number of Businesses or Other Entities to Whom the Regulation will Apply

The proposed regulation applies to all PCPs and Medicaid recipients enrolled in the MEDALLION program. The exact number of PCPs affected will depend on the number that choose to enroll in the program. The additional number of Medicaid recipients affected by the proposed regulation is approximately 53,000.

Localities and Types of Businesses Particularly Affected

No localities are particularly affected by this proposed regulation. The proposed regulation does particularly affect primary care physicians enrolled in the MEDALLION program.

Projected Number of Persons and Employment Positions Affected

The regulation is not anticipated to have a measurable effect on employment.

Because reimbursement is based on fee-for-service, no additional costs to health care providers are anticipated.

The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning the expansion of MEDALLION enrollment.

Summary:

The proposed amendments expand mandatory enrollment in the MEDALLION program to aged, blind, and disabled recipients based on the 1995 Appropriations Act.

12 VAC 30-120-260 through 12 VAC 30-120-350. Part V, MEDALLION.

§4. 12 VAC 30-120-260. Definitions.

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

"ABD" means aged, blind and disabled recipients of public assistance programs as defined by the Virginia Department of Social Services.

"ADG AFDC" means Aid to Families with Dependent Children, which is a public assistance program, administered by the Department of Social Services, providing financial assistance to needy citizens.

"ADG AFDC related" means those recipients eligible for assistance as an extension of the ADG AFDC program, such as pregnant women and indigent children under specific ages. It shall not include foster care or spend-down medically needy clients.

"Ancillary services" means those services accorded to a client that are intended to support the diagnosis and treatment of that client. These services include, but are not necessarily limited to, laboratory, pharmacy, radiology, physical therapy, and occupational therapy.

"Client" or "clients" means an individual or individuals having current Medicaid eligibility who shall be authorized to participate as a member or members of "MEDALLION."

"Comparison group" means the group of Medicaid recipients whose utilization and costs will be compared against similar groups of "MEDALLION" clients.

"Covering provider" means a provider designated by the primary care provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

"Emergency services" means services provided in a hospital, clinic, office, or other facility that is equipped to furnish the required care, after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in:

1. Placing the client's health in serious jeopardy;
2. Serious impairment to bodily functions; or
3. Serious dysfunction of any bodily organ or part.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment program.

"Gatekeeper" means the function performed by the "MEDALLION" primary care provider in controlling and managing assigned clients through appropriate levels of medical care.

"General practitioner" means a licensed physician who provides routine medical treatment, diagnosis, and advice to maintain a client's health and welfare.

"Primary care provider" or "PCP" means that "MEDALLION" provider responsible for the coordination of all medical care provided to a "MEDALLION" client and shall be recognized by DMAS as a Medicaid provider.

"Site" means, for purposes of these regulations ~~this part~~, the geographical areas that best represent the health care delivery systems in the Commonwealth. In certain areas (sites), there may be two or more identifiable health care delivery systems.

"Specialty" or "specialist services" means those services, treatments, or diagnostic tests intended to provide the patient with a higher level of medical care or a more definitive level of diagnosis than that routinely provided by the primary care provider.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses.

"State" means the Commonwealth of Virginia.

§ 2- 12 VAC 30-120-270. Program purpose.

The purpose of "MEDALLION" shall be to provide management in the delivery of health care services by linking the primary care provider (PCP) with targeted clients. The PCP shall provide medical services as appropriate for clients' health care needs and shall coordinate clients' receipt of

other health services. This shall include, but not be limited to, referral to specialty providers as medically appropriate.

§ 3- 12 VAC 30-120-280. "MEDALLION" clients.

A. Clients of "MEDALLION" shall be individuals receiving Medicaid as ~~ADG ABD, AFDC or ADG-related AFDC-related~~ categorically needy and medically needy (except those becoming eligible through spend-down) and except for foster care children, whether or not receiving cash assistance grants. ~~The following exclusions shall apply:~~

4. B. Exclusions.

1. The following individuals shall be excluded from participating in "MEDALLION":

- a. Individuals who are inpatients in mental hospitals and skilled nursing facilities;
- b. Individuals who are receiving personal care services;
- c. Individuals who are participating in foster care or subsidized adoption programs, who are members of spend-down cases, or who are refugees; ;
- d. *Individuals receiving Medicare.*

~~d.~~ 2. A client may be excluded from participating in "MEDALLION" if any of the following apply:

- ~~(1)~~ a. Client not accepted to the caseload of any participating PCP.
- ~~(2)~~ b. Client whose enrollment in the caseload of assigned PCP has been terminated and other PCPs have declined to enroll the client.

2. C. Client enrollment process.

a. 1. All ~~ADG ABD, AFDC or ADG AFDC-related~~ recipients excepting those meeting one of the exclusions of ~~§ 3 subsection B of this section~~ shall be enrolled in "MEDALLION."

b. 2. Newly eligible individuals shall not participate in "MEDALLION" until completion of the Medicaid enrollment process. This shall include initial enrollment at the time of eligibility determination by Department of Social Services staff, or any subsequent reenrollment that may occur.

c. 3. Clients shall receive an interim Medicaid card from DMAS, and shall be provided authorized medical care in accordance with current procedures, after eligibility requirements are met.

d. 4. Once clients are fully registered as "MEDALLION" clients, they will receive a "MEDALLION" identification card ~~to replace material in addition to~~ the Medicaid card.

3. D. PCP selection. Clients shall be given the opportunity to select the PCP of their choice.

a. 1. Clients shall notify DMAS of their PCP selection within 30 days of receiving their "MEDALLION" enrollment notification letter. If notification is not received by DMAS within that timeframe, DMAS shall select a PCP for the client.

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b. 2. Selected PCP shall be a "MEDALLION" enrolled provider.

e. 3. PCP will provide 24-hour access, which shall include as a minimum a 24-hour telephone number to be placed on each client's "MEDALLION" identifier.

d. 4. DMAS shall review client requests in choosing a specific PCP for appropriateness and to ensure client accessibility to all required medical services.

4. E. Mandatory assignment of PCP. Assignments shall be made for those clients not selecting a PCP as described in subsection D of this section. The selection process shall be as follows:

a. 1. Clients shall be assigned to "MEDALLION" providers on a random basis. The age, gender, and any special medical needs shall be considered in assigning a provider with an appropriate specialty. Any prior patient-provider relationships shall be maintained if appropriate. Families will be grouped and assigned to the same provider when possible.

b. 2. Each site having two or more separately identifiable provider groups shall be divided into separate regions for client assignment. Clients shall initially be assigned to a PCP according to the region in which they reside. Should insufficient PCPs exist within the client's specific region, clients shall be assigned a PCP in an adjacent region.

e. 3. Each PCP shall be assigned a client, or family group if appropriate, until the maximum number of clients the PCP has elected to serve has been reached, or until there are no more clients suitable for assignment to that PCP, or all clients have been assigned.

5. F. Changing PCPs. "MEDALLION" clients shall remain with the assigned PCP for a period of not less than six months. After that time clients may elect to change PCPs. Changes may be made annually thereafter.

a. 1. Requests for change of PCP "for cause" are not subject to the six-month limitation, but shall be reviewed and approved by DMAS staff on an individual basis. Examples of changing providers "for cause" may include but shall not be necessarily limited to:

(1) a. Client has a special medical need which cannot be met in his service area or by his PCP.

(2) b. Client has a pre-existing relationship with a Medicaid provider rendering care for a special medical need.

(3) c. Mutual decision by both client and provider to sever the relationship.

(4) d. Provider or client moves to a new residence, causing transportation difficulties for the client.

(5) e. Provider cannot establish a rapport with the client.

b. 2. The existing PCP shall continue to retain the client in the caseload, and provide services to the client until a new PCP is assigned or selected.

e. 3. PCPs may elect to release "MEDALLION" clients from their caseloads for cause with review and approval by DMAS on a case-by-case basis. In such circumstances, §-3 subdivision F 2 of this section shall apply.

6. G. "MEDALLION" identification card material. Each client enrolled shall receive a "MEDALLION" card identifier, which shall ~~replace and~~ be distinct from the Medicaid card in appearance, ~~and embossed with the "MEDALLION" logo.~~

a. 1. The front of the card identifier shall include the client's name, Medicaid case identification number, birthdate, sex, PCP's name, address, 24-hour access telephone number, and the effective time period covered by the card.

b. 2. The "MEDALLION" Hot Line 800 number will be listed on the card identifier.

H. Prior authorization.

e. 1. Clients shall contact their assigned PCP or designated covering provider to obtain authorization prior to seeking nonemergency care.

d. 2. Emergency services shall be provided without delay or prior authorization. However, the emergency nature of the treatment shall be documented by the provider providing treatment and should be reported to the PCP after treatment is provided. Clients should inform the PCP of any emergency treatment received.

§-4. 12 VAC 30-120-290. Providers of services.

Providers who may enroll to provide "MEDALLION" services include, but are not limited to, physicians of the following primary care specialties: general practice, family practice, internal medicine, and pediatrics. Exceptions may be as follows:

1. Providers specializing in obstetric/gynecologic care may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

2. Physicians with subspecialties may enroll as "MEDALLION" providers if selected by clients as PCPs but only if the providers agree to provide or refer clients for primary care.

3. Other specialty physicians may enroll as PCPs under extraordinary, client-specific circumstances when DMAS determines with the provider's and recipient's concurrence that the assignment would be in the client's best interests. Such circumstances may include, but are not limited to, the usual-and-customary practice of general medicine by a board-certified specialist, maintenance of a pre-existing patient-physician relationship, or support of the special medical needs of the client.

4. DMAS shall review applications from physicians and other health care professionals to determine appropriateness of their participating as a "MEDALLION" PCP.

5. The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.

~~§-5.~~ 12 VAC 30-120-300. "MEDALLION" provider requirements.

A. PCPs must require their clients to present their currently effective "MEDALLION" card upon presentation for services.

~~B. PCPs shall track and document any emergency care provided to "MEDALLION" clients.~~

~~C. B.~~ PCPs shall function as "gatekeeper" for assigned clients. Specific requirements shall include but are not necessarily limited to:

1. Providing patient management for the following services: physician, pharmacy, hospital inpatient and outpatient, laboratory, ambulatory surgical center, radiology, and durable medical equipment and supplies.

2. Providing or arranging for physician coverage 24 hours per day, seven days per week.

3. Determining the need for and authorizing when appropriate, all nonemergency care.

4. Being an EPSDT provider, or having a referral relationship with one, and providing or arranging for preventive health services for children under the age of 21 in accordance with the periodicity schedule recommended in the Guidelines for Health Supervision of the American Academy of Pediatrics (AAP), 1991.

5. Making referrals when appropriate, conforming to standard medical practices, to medical specialists or services as required. The referral duration shall be at the discretion of the PCP, and must be fully documented in the patient's medical record.

6. Coordinating inpatient admissions either by personally ordering the admission, or by referring to a specialist who may order the admission. ~~The PCP must have admitting privileges at a local hospital or must make arrangements acceptable to DMAS for admissions by a physician who does have admitting privileges.~~

7. Maintaining a legibly written, comprehensive, and unified patient medical record for each client consistent with documentation requirements set forth in DMAS' Physician Manual.

8. Documenting in each client's record all authorizations for referred services.

9. Providing education and guidance to assigned clients for the purpose of teaching correct methods of accessing the medical treatment system and promoting good health practices.

10. Track and document any emergency care provided to clients.

~~§-6.~~ 12 VAC 30-120-310. Services exempted from "MEDALLION."

A. The following services shall be exempt from the supervision and referral requirements of "MEDALLION":

1. Obstetrical services (*pregnancy and pregnancy related*);

2. Psychiatric and psychological services, to include but not be limited to mental health, mental retardation services;

3. Family planning services;

4. Routine newborn services when billed under the mother's Medicaid number;

5. Annual or routine vision examinations (*under age 21*);

6. Dental services (*under age 21*); and

7. Emergency services;

8. *EPSDT well-child exams (health departments only and under age 21); and*

9. *Immunizations (health departments only).*

B. While reimbursement for these services does not require the referral from or authorization by the PCP, the PCP must continue to track and document them to ensure continuity of care.

~~§-7.~~ 12 VAC 30-120-320. PCP payments.

A. DMAS shall pay for services rendered to "MEDALLION" clients through the existing fee-for-service methodology and a case management fee.

B. "MEDALLION" providers shall receive a monthly case management fee of \$3.00 per client.

C. PCPs may serve a maximum of ~~4,000~~ 2,000 "MEDALLION" clients. Groups or clinics may serve a maximum of ~~4,000~~ 2,000 "MEDALLION" clients per authorized PCP in the group or clinic. Exceptions to this will be considered on a case-by-case basis predicated upon client needs.

~~§-8.~~ 12 VAC 30-120-330. Utilization review.

A. DMAS shall review claims for services provided by or resulting from referrals by authorized PCPs. Claims review shall include, but not be limited to, review for the following:

1. Excessive or inappropriate services;

2. Unauthorized or excluded services; and

3. Analysis of possible trends in increases or reductions of services.

~~§-9.~~ 12 VAC 30-120-340. Client and provider appeals.

A. Client appeals. Clients shall have the right of appeal of any adverse action taken by DMAS consistent with the provisions of ~~VR 460-04-8.7 Part 1~~ (12 VAC 30-110-10 et seq.) of 12 VAC 30-110.

B. Provider appeals. Providers shall have the right to appeal any adverse action taken by DMAS under these

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regulations this chapter pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

~~§ 10. "MEDALLION" phase-in across the Commonwealth.~~

~~DMAS presently has federal authority to administer "MEDALLION" in its initial phase consistent with its approved waiver. At such time as DMAS receives approval from the federal funding authority to expand "MEDALLION," the program shall be expanded in a phased-in manner to encompass the larger geographic areas.~~

12 VAC 30-120-350. PCP remedies for violation, breach, or nonperformance of provider agreement terms and addendum.

A. Termination. Either the PCP or DMAS may terminate the PCP's enrollment in the MEDALLION program at any time if either party determines that the other party has failed to perform any of its functions or duties under the addendum to the provider agreement (hereafter referred to as the addendum) between the department and the PCP. In such event, the party exercising this option shall notify the other party in writing of the intent to terminate the addendum and shall give the other party 30 days to correct the identified violation, breach or nonperformance of the addendum. If such violation, breach or nonperformance of the addendum is not satisfactorily addressed within this time period, the exercising party must notify the other party in writing of its intent to terminate the addendum at least 60 days prior to the proposed termination date. The termination date shall always be the last day of the month in which the 60th day falls. The addendum may be terminated by DMAS sooner than the time periods for notice specified in this subsection if DMAS determines that a recipient's health or welfare is jeopardized by continued enrollment under the care of the PCP.

B. Suspension of new enrollment.

1. Whenever DMAS determines that the PCP is out of compliance with the addendum, it may suspend the PCP's right to enroll new recipients. DMAS, when exercising this option, shall notify the PCP in writing of its intent to suspend new enrollment at least 30 days prior to the beginning of the suspension period. The suspension period may be for any length of time specified by DMAS, or may be indefinite. The suspension period may extend up to any expiration date of the addendum.

2. DMAS may also suspend new enrollment or disenroll recipients in anticipation of the PCP not being able to comply with federal or state laws at its current enrollment level. Such suspension shall not be subject to the 30-day notification requirement. DMAS may notify recipients of their PCP's noncompliance and provide an opportunity to enroll with another PCP.

C. Withholding of management or other payments and recovery of damage costs. DMAS may withhold portions of management or other fees or otherwise recover damages from the PCP as follows:

1. Whenever DMAS determines that the PCP has failed to perform an administrative function required under this

contract, the department may withhold a portion of management or other fees to compensate for the damages which this failure has entailed. For the purposes of this section, "administrative function" is defined as any contract obligation other than the actual provision of contract services.

2. In any case under this contract where DMAS has the authority to withhold management or other fees, DMAS also shall have the authority to use all other legal processes for the recovery of damages.

D. Department-initiated disenrollment. DMAS may reduce the maximum enrollment level or number of current enrollees whenever it determines that the PCP has failed to provide or arrange for the provision of one or more of the services required under the addendum to the provider agreement, or that the PCP has failed to maintain or make available any records or reports required under the addendum which DMAS requires to determine whether the PCP is providing services as required. The PCP shall be given at least 30 days notice prior to DMAS taking any action set forth in this subsection.

E. Inappropriate service delivery. PCPs demonstrating a pattern of inappropriate provision of services may be subject to suspension of new enrollments, withholding, in full or in part, of management fees, addendum termination, or refusal to be offered the opportunity to participate as a PCP in a future time period.

DOCUMENT INCORPORATED BY REFERENCE

Guidelines for Health Supervision: Periodicity Schedule, American Academy of Pediatrics, 1991.

STATE OF VIRGINIA
DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Addendum to Provider Agreement for Participation as a Primary Care Provider in MEDALLION

This Addendum is entered into by the Department of Medical Assistance Services (the Department) and

_____(the Provider)
Name of Physician

of _____
Street Address City State Zip

on this _____ day of _____, 19 _____.

1. This is an addendum to the Provider's Medicaid Participation (the Agreement). The Agreement will continue in force in accordance with its terms.

2. The provider agrees to function in the role of Primary Care Provider, hereafter referred to as the "PCP", as an authorized provider for MEDALLION. In this role, the Provider will provide, or arrange for the provision of, all routine preventative and treatment services normally provided by a primary care physician. This will include ESPDT services and the maintenance of a comprehensive medical record for each patient assigned to MEDALLION. In particular, the Provider will provide and/or coordinate patient management for the following services: physician services; hospital inpatient and outpatient services; ambulatory surgical center services and rural health center services; ancillary services to include laboratory, pharmacy, and radiology; and durable medical equipment and supplies. Providers must have admitting privileges at a local accredited hospital or must make arrangements for admissions with a physician who does have admitting privileges.

3. The Provider will provide or arrange for coverage for primary care services twenty-four (24) hours per day, seven (7) days per week. In the event the Provider fails to comply with this provision, appropriate sanctions, up to and including termination of this Agreement, will be applied by the Department. See paragraph (10) of the Medicaid Provider Participation Agreement with respect to appeals, and the MEDALLION supplement to the Provider Manual with respect to sanctions.

4. The Provider will coordinate all other Medicaid authorized care for each patient enrolled in his or her MEDALLION caseload including referral to specialty providers for diagnosis or treatment. In referring for specialized evaluation and/or treatment, the PCP will provide the specialist with authorization to cover appropriate testing and treatment. This authorization may be verbal or written for a period appropriate to the illness. All subsequent referral claims must have the PCP's MEDALLION identification number on the claim form.

5. The Provider will not be required to authorize emergency care, obstetrical care, psychiatric or psychological care, annual or routine vision examinations, dental care, or other Medicaid authorized care exempted from MEDALLION as identified in the MEDALLION Medicaid Provider Manual Addendum (Section III).

6. Providers will receive the usual Medicaid fees for services rendered plus a monthly three dollar (\$3) case management fee for each client assigned.

7. MEDALLION clients approved by the Department to be released from the care of their designated Provider will continue to receive care from that designated Provider until another Provider has been assigned.

8. Provider Medicaid numbers will be used as the MEDALLION identification number.

9. This Addendum will expire concurrent with any termination or expiration of the Agreement. However, the Addendum may be terminated for any reason on thirty (30) days notice by either party without mandatory termination of the Agreement.

Entered into by:

Signature of Provider

Date

Specialty

Telephone Number

Board of Medicine License Number

Medicaid Provider I.D. Number

Thomas E. McGraw, Director
Alternative Health Care Division

Date

Mail completed forms to:

MEDALLIONSM
Department of Medical Assistance Services
P.O. Box 537
Richmond, Virginia 23204

Rev: 7/93

MEDALLION PROVIDER ENROLLMENT FORM

*Sections in gray must be completed for this form to be valid.
PLEASE TYPE or PRINT*

General Information (Mandatory):

Provider Name: _____ Provider Number: _____
 Practice Name: _____ Practice Type: _____
 Address: _____ Contact Person: _____

Telephone Numbers: Office: _____ FAX: _____
 After Hours: _____ Other: _____

Please indicate, with a check mark, the 24-hour access phone number you wish to appear on your patients' MEDALLION cards. YOU MAY ONLY CHOOSE ONE NUMBER as your 24-hour access number.

MEDALLION Panel Information (Mandatory)

Program Type:
 AFDC and Related
 Aged, Blind and Disabled
 (Excluding special requests, Aged patients will not be assigned to Pediatric practices.)

Panel Enrollment Type:
 Open (Random & History)
 History Only**
 Existing Clients Only***
 Existing Clients Only list is attached.

Panel Enrollment Size:
 Initial caseload: _____
 (2000 client maximum per physician*)

Children only
 Adults only
 Women only

* Depending on staff size and hours of operation
 ** History Only panel means that only patients treated and billed to Medicaid within the last 12 months will be assigned to your panel. No other patients can be added unless your office contacts MEDALLION directly by phone, or by FAX with the Client Assignment Fax form.
 *** Existing Clients Only panel means that only the clients that you have listed will be assigned to your panel. Note: You must provide MEDALLION with a list of patients with Medicaid numbers. No other patients can be added unless your office contacts MEDALLION directly by phone, or by FAX with the Client Assignment Fax form.

Special Services

Multilingual: Spanish
 Korean
 Vietnamese
 Other: _____

Extended hours: Evenings until _____
 Saturday _____
 Sunday _____

Special Services:
 well/sick waiting rooms EKG
 in-office lab X-ray
 in-office surgery ultrasound
 Other: _____

Special Arrangements: _____
 Other: _____

Service Locations

Please provide each location or site at which you practice, the associated Medicaid number and the 24 hour coverage number. This information will be printed on the clients' MEDALLION card; please note, however, that only one provider number and location can be assigned to each client.

Medicaid Number	Location	Telephone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____

Affiliations

Your associated physicians in the practice can be affiliated for business and billing purposes. If you wish to affiliate physicians in your practice, please list the names and Medicaid numbers of other physicians in the practice:

Name	Medicaid Number
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Affiliations list is attached.

Additional Information: _____

_____ (Print Name) _____ (Physician Signature) _____ (Date)

MEDALLION Representative Contact: _____

Mail completed form to:
 MEDALLION
 ATTN: Kim Towns
 Post Office Box 537
 Richmond, Virginia 23204
 (804) 371-2451 FAX: (804) 786-5799

DEPARTMENT OF SOCIAL SERVICES

Title of Regulation: VR 615-01-57 [22 VAC 40-35-10 et seq.]. The Virginia Independence Program.

Statutory Authority: §§ 63.1-105.1, 63.1-105.3, 63.1-105.4, 63.1-105.6, 63.1-105.7, 63.1-133.43, 63.1-133.46, 63.1-133.49, and 63.1-133.51 of the Code of Virginia.

Public Hearing Dates:

January 17, 1996 - 1 p.m. (Roanoke)
January 22, 1996 - 1 p.m. (Williamsburg)
January 31, 1996 - 1 p.m. (Stafford)

Written comments may be submitted until February 24, 1996.

(See Calendar of Events section for additional information)

Basis: This regulation is promulgated under the authority of § 63.1-25 of the Code of Virginia. The section sets forth the authority of the Board of Social Services to promulgate regulations governing the administration of public assistance programs, such as this regulation which establishes the Virginia Independence Program (VIP). VIP amends requirements in the Aid to Families with Dependent Children (AFDC) and Food Stamp programs.

The proposed regulation is mandated pursuant to §§ 63.1-105, 63.1-105.1, 63.1-105.3, 63.1-105.4, 63.1-105.6, 63.1-105.7, 63.1-133.43, 63.1-133.46, 63.1-133.49, 63.1-133.51, and 63.1-133.53 of the Code of Virginia. Federal waivers were granted effective July 1, 1995, by the U. S. Department of Health and Human Services and the U. S. Department of Agriculture, under § 1115 of the Social Security Act and § 17(b) of the Food Stamp Act, respectively, to implement the proposed regulation with the following exceptions which are contingent upon approval of additional waivers: (i) the definition of community work experience in 22 VAC 40-35-10; (ii) references to food stamp sanctions in 22 VAC 40-35-100 B 1 d and 22 VAC 40-35-110; and (iii) in the Full Employment Program, reimbursement procedures cited in 22 VAC 40-35-100 D 2 c.

Purpose: The state has experienced increasing welfare costs with diminishing resources to administer welfare programs. Under federal program rules, families have little incentive to become self-sufficient and leave public aid. The system is set up to help families remain on assistance rather than provide the tools and incentives to take responsibility for themselves and their families. Not only is this costly in terms of dollars spent but also in terms of the dependence it fosters on government aid.

In 1994, the Empowerment Commission, commissioned by Governor Allen, examined the current welfare system and recommended changes to achieve greater efficiency and effectiveness in operations and to improve responsiveness to the citizens of the Commonwealth. The Commission found that people want to be independent and that the programs and services provided by the state and local agencies should empower families to be independent.

The proposed regulation establishes a temporary assistance program for families with children, emphasizing personal responsibility, self-reliance, requiring able bodied individuals to work for benefits, and offering families the necessary tools

to move from subsistence to self-sufficiency. It also provides for more responsible use of public funds.

Substance: Major elements of the proposed regulation are as follows:

1. The custodial parent or other caretaker-relative must cooperate in identifying the parents of a child for whom aid is requested, establishing paternity, locating the noncustodial parents, and establishing and collecting support. Noncooperation may result in exclusion of the parent or other caretaker-relative from the grant or, if paternity is not established after six months receipt of assistance, termination of assistance to the entire family.
2. In lieu of receipt of ongoing assistance, a diversionary assistance payment can be made to provide short-term aid to meet an emergency situation. The family must meet AFDC categorical and financial eligibility criteria. The amount of the diversionary payment may not exceed the maximum AFDC assistance the family would otherwise be eligible to receive during a period of 120 days.
3. All recipients under age 18 must comply with compulsory school attendance requirements. Children reported as truant must be assisted to achieve compliance. Noncooperation will result in ineligibility of the truant child for AFDC. Children found truant by a court are also ineligible for AFDC benefits.
4. Minor parents must reside with a parent, legal guardian, or other person standing in loco parentis to receive AFDC. Exceptions are allowed in certain situations.
5. A family is not entitled to any increase in AFDC benefits for a child born or conceived during the period of the family's eligibility for AFDC or, upon subsequent reapplication, for a child conceived during the six-month period following case closure.
6. The Virginia Independence Program requires all recipients of AFDC to participate in its work component, the Virginia Initiative for Employment Not Welfare (VIEW), unless the individual meets an exemption. Refusal to participate in the VIEW program will cause an individual's AFDC case to be closed. Failure to satisfactorily participate in the VIEW program will result in an individual's AFDC case being sanctioned. The individual's food stamp case may also be sanctioned.

Major elements of the VIEW component are as follows:

- a. VIEW participants who seek an exemption based on incapacity must provide written verification from a physician of the incapacity and the expected duration of the incapacity. VIEW participants who provide care for another member of the household who is incapacitated are also exempt. Incapacity is defined as receipt of Social Security Disability benefits, Supplemental Security Income, or incapacity based on a written medical statement from a physician. Exempted individuals may volunteer for VIEW.
- b. VIEW participants have the primary responsibility to arrange day care and transportation necessary to be

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employed or participate in required activities. The department will provide day care and transportation if the participant is unable to do so. Medicaid will be provided in accordance with the Department of Medical Assistance State Plan and regulations. Local departments may provide support services itemized in § 63.1-133.49 of the Code of Virginia.

c. VIEW recognizes that parents have the obligation to support their children. An Agreement of Personal Responsibility which states the participant's obligations and responsibilities in order to be eligible for AFDC must be signed by the participant as a condition of eligibility.

d. Work activities in which an individual will participate are prioritized: unsubsidized full- or part-time or temporary employment in the private sector; subsidized full- or part-time employment (Full Employment Program); community work experience or on-the-job training provided by a specific employer.

e. The Full Employment Program (FEP) will use the participant's AFDC and food stamp benefit amounts to subsidize wages paid by an employer. The subsidy will be based on the amount of the participant's AFDC and food stamp benefits received the month prior to the month the participant is assigned to FEP. The participant will be paid only for the hours actually worked.

f. Community work experience positions may be in state, regional and local agencies, or any organization which meets the definition provided in 482 (f) of the Social Security Act. Community work experience assignments are for an initial period of six months. These participants cannot be used to displace regular workers.

g. Education and job skills training, in conjunction with a work activity, may be provided to VIEW participants in certain circumstances.

h. Participants will be sanctioned for noncompliance without good cause, as defined by the JOBS State Plan.

i. A hardship exception may be made to the time limitation for receipt of AFDC benefits. The local department must evaluate the request for a hardship exception to determine if one should be granted. If granted, an extension for receipt of AFDC benefits for up to one year may be allowed.

j. Acceptable good cause reasons are defined.

k. The locality must refer requests for hardship extensions past one year to a panel composed of the Commissioner of the Virginia Department of Social Services, the Commissioner of the Virginia Employment Commission, and the Executive Director of the Governor's Employment and Training Department. The panel will evaluate each request and will grant or deny the requests.

Issues: The proposed regulation reforms the eligibility criteria in the Aid to Families with Dependent Children (AFDC)

Program in the Commonwealth. The primary advantages of the regulation to the public are (i) the temporary nature of assistance provided through VIP for families able to work, (ii) increased employment opportunities, (iii) increased involvement of businesses and organizations within the community, and (iv) greater emphasis on strengthening family relationships and personal responsibility and accountability, shifting responsibility for the family's well-being away from public aid to the family.

Primary advantages to recipients in the work component, VIEW, are (i) the enhanced financial incentives allowed which make employment worthwhile, (ii) the valuable work experience that will be obtained before monthly benefits are terminated, and (iii) the concomitant growth in confidence and esteem that are derived from meeting the higher expectations of the program.

Recipients will benefit from the increased personal responsibility and accountability necessitated by the following provisions: (i) the requirement that recipients under age 18 attend school, (ii) the imposition of the family cap when additional children are born to an eligible AFDC family, (iii) the restriction placed on minor parents and their children, requiring that the minor parent reside with a parent or other person standing in loco parentis to qualify for aid, and (iv) the penalties that may be imposed for not cooperating with support enforcement requirements. These requirements promote positive changes that will strengthen families and empower them to move away from dependence toward independence. This, in turn, will benefit all citizens of the state.

Also advantageous to the public is a new AFDC component, diversionary assistance, designed to assist families with children to meet emergency situations. This alternative gives families an opportunity to resolve the emergency without becoming dependent on receipt of AFDC benefits on an ongoing basis.

There are no anticipated disadvantages for the public or the local social services departments. VIP provides able-bodied adults with the needed help to find employment and become self-reliant. It gives back responsibility for families to the families, themselves, and encourages behavior that will benefit both the children and adults. Through personal responsibility, enhanced work programs, and increased community involvement, this program empowers recipients to replace dependence with independence.

Department of Planning and Budget's Economic Impact Analysis:

The Virginia Independence Program (VIP) makes very significant changes in welfare assistance in the Commonwealth. VIP limits the duration of certain types of assistance, requires work training and experience of adult participants, requires minor recipients to attend school and eliminates certain benefit increases for recipient families who have additional children. The program is designed to change the incentive structure of those on AFDC to encourage entry into the workforce and to provide transitional training and employment.

In assessing the economic impact of a program such as the VIP it is important to keep in mind the meaning of "value" in

economic analysis. Under the principle of consumer sovereignty, all economic value arises from the preferences of individuals. Thus, in the current context, economic analysis does not concern itself so much with the size of the income transfers in a welfare program as with the level of satisfaction of individuals involved in the transfer both before and after the transfer.

For welfare programs, we can naturally break the population into two groups: net "donors" (taxpayers) and net recipients. To know the value of any welfare program, we need to know the before and after outcome for these two groups. There are two reasons why those paying for a welfare program might feel better off than before their mandatory contribution to the program. People have altruistic motivations and benefit from a reduction in poverty. Also, people may benefit because they prefer not to experience the effects that poverty in others may have on their own lives. However, insofar as a welfare program hurts the intended beneficiaries or worsens the observable consequences of poverty, that program may actually make the contributing population worse off.

Implementation of the Virginia Independence Program and the Virginia Initiative for Employment Not Welfare (VIEW), the mandatory work component, will generate approximately \$136 million in total net savings over a five year period. While this figure is not in itself a measure of the net economic impact of the VIP, it is a measure of a benefit that could flow to taxpayers in lower tax payments or a reallocation of expenditures to other programs. On the assumption that the VIP will also be a net benefit to the AFDC beneficiaries, it is possible that the economic value of the program could be higher than this amount.

On the receiving end of welfare payments, the problem of measuring economic value is somewhat more problematic in theory and in practice. Under most circumstances, if one observes a person voluntarily accepting a payment (or some in-kind) benefit we would assume that this person is better off by the amount of the transfer. There is, however, a long-held belief by many people that a lengthy dependence on welfare payments from government, even though accepted voluntarily, may have a negative value for the recipient and his or her family. Outcomes such as this are difficult to analyze with the standard tools of economic analysis since economic analysis is based on the assumption that (in general) people will not take part in a voluntary transaction if it makes them worse off. Measuring any changes in the well-being of recipients once this program is implemented is important and will require the participation of other disciplines as well.

The stated object of the VIP is to reduce some of the perceived negative impacts of welfare programs. It is widely accepted that these negative impacts exist: reduced incentive to work, increased incentive to bear children out of wedlock, increased incentive for divorce, etc. What is difficult to measure is the magnitude of these effects.

The VIP program continues and accelerates the national trend for states to experiment with alternative programs designed to provide enhanced job skills and opportunities with reduced incentive to limit work effort. There have been a number of pilot programs that required AFDC recipients to participate in training, preparation and actual work

experience. These programs have most often resulted in a significant share of participants entering the workforce. These programs were successful at improving the employability of significant numbers of AFDC recipients. The VIP establishes a statewide program of helping recipients improve their employment options. The mandatory participation and benefits termination provisions add to the incentive that those able to work have to enter the workforce. The value of the work program and the value of the employment to former recipients are areas that should be examined carefully as experience with the program develops.

If properly evaluated, Virginia's welfare reform program will help answer some of the important questions about the nature and value of the consequences of these reforms. Since other states are also experimenting with alternative arrangements, it is important that evaluations of those experiments be made and used to fine-tune Virginia's effort.

No localities will be particularly affected by this proposed regulation.

Agency's Response to the Economic Impact Analysis:

The Department of Social Services concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

The proposed regulation revises the Aid to Families with Dependent Children (AFDC) and Food Stamp programs. In AFDC, it amends existing eligibility criteria related to (i) school attendance, (ii) receipt of assistance by minor parents, and (iii) cooperation in establishing and collecting support. The regulation adds (i) a rule placing a cap on additional cash benefits for children born to or conceived by an AFDC family, and (ii) a work component, the Virginia Initiative for Employment Not Welfare (VIEW), in which able bodied recipients must participate. One of the work activities is the Full Employment Program (FEP) in which the participant's AFDC and food stamp benefits are paid to an employer who then pays wages to the participant for hours worked. The proposed regulation also includes a diversionary assistance component which offers families otherwise eligible for AFDC the option to receive a single payment of up to four months assistance to meet an emergency in lieu of receiving ongoing monthly AFDC benefits. These requirements are currently in effect under authority of an emergency regulation published in the June 26, 1995, edition of the Virginia Register. The proposed regulation contains minor changes from the emergency regulation in the areas of (i) the compulsory school attendance requirement, (ii) cooperation related to enforcement of support requirements, (iii) the family cap limitation, and (iv) the VIEW component.

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22 VAC 40-35-10 et seq. The Virginia Independence Program.

CHAPTER 35.
VIRGINIA INDEPENDENCE PROGRAM.

PART I.
DEFINITIONS.

22 VAC 40-35-10. Definitions.

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

"Actively seeking employment" means satisfactorily participating in any assigned job-seeking activity while in the program.

"Adult portion" means the AFDC amount paid on behalf of the parent or other caretaker-relative with whom the AFDC child resides, including a minor parent. This amount is the difference in the standard of assistance for a family size which includes the adult and the standard of assistance for a family size of one less person.

"Aid to Families with Dependent Children Program" or "AFDC" means the program authorized in § 406 of the Social Security Act and administered by the Virginia Department of Social Services, through which a relative can receive monthly cash assistance for the support of his eligible children.

"AFDC-Foster Care" means a federal program authorized under § 472 of the Social Security Act and administered by the Virginia Department of Social Services, which provides financial assistance on behalf of qualifying children.

"Aid to Families with Dependent Children-Unemployed Parent" or "AFDC-UP" means the program authorized in § 407 of the Social Security Act and administered by the Virginia Department of Social Services, which provides aid to families with dependent children who are deprived of parental support or care by reason of the unemployment of the parent who is the principal wage earner.

"Agreement" means the written individualized Agreement of Personal Responsibility required by § 63.1-133.49 of the Code of Virginia.

"Allotment" means the monthly food stamp benefit given to a household.

"Applicant" means a person who has applied for AFDC or AFDC-UP benefits and the disposition of the application has not yet been determined.

"Assistance unit" means those persons who have been determined categorically and financially eligible to receive assistance.

"Caretaker-relative" means the natural or adoptive parent or other relative, as specified in 45 CFR 233.90(c)(1)(v), who is responsible for supervision and care of the needy child.

"Case management" means the process of assessing, coordinating, monitoring, delivering or brokering activities and services necessary for VIEW participants to enter

employment or employment-related activities as quickly as possible.

"Case management services" means services which include, but are not limited to, job development and job placement, community work experience, education, skills training, and support services.

"Case manager" means the worker designated by the local department of social services, a private-sector contractor or a private community-based organization including nonprofit entities, churches, or voluntary organizations that provide case management services.

"Child day care" means those services for which a participant is eligible pursuant to child day care services policy.

"Child day care services/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 children under the age of 13 (or children up to 18 years of age if they are physically or mentally incapable of caring for themselves or subject to court supervision) for less than a 24-hour period.

"Community work experience" means work for benefits in a public or private organization that serves a community/public function.

"Division of Child Support Enforcement" or "DCSE" means that division of the Virginia Department of Social Services which is responsible under Title IV-D of the Social Security Act to locate noncustodial parents, establish paternity, establish child support and health care orders, enforce payment of delinquent support, and collect and distribute support payments.

"Department" means the Virginia Department of Social Services.

"Diversionary cash assistance" means a one-time lump sum payment to an individual or third-party vendor to prevent long-term receipt of AFDC.

"Family" means an AFDC assistance unit.

"Food Stamp Program" means the program administered through the Virginia Department of Social Services through which a household can receive food stamps with which to purchase food products.

"Full Employment Program" or "FEP" means subsidized, training-oriented, employment which replaces the AFDC and food stamp benefits of a participant. This component of VIEW is designed to train the recipient for a specific job, increase his self-sufficiency and improve his competitiveness in the labor market.

"Full-time unsubsidized employment" means employment which is considered by the employer to be full time, but in no case less than 30 hours per week, and for which no JOBS, VIEW, AFDC, or food stamp funds are used to pay the individual's salary.

"Grant" means the monthly AFDC benefit payment.

"Hardship exceptions" means prescribed reasons which, if applicable, would allow an extension of receipt of AFDC benefits.

"He" means a male or female as applicable.

"In loco parentis" means an adult relative or other adult who is acting in place of a parent.

"Incapacitated" means a medically verified condition which renders an individual unable to work.

"Job Opportunities and Basic Skills Training Program (JOBS)" means the program authorized by Title IV-F of the Social Security Act. This program provides education, training and work experience to enhance employment opportunities for AFDC recipients who are not exempt from participation.

"Job finding" means identification of available jobs.

"Job matching" means matching a participant's minimum skills or prior work experience to available job openings.

"Job placement" means placing a participant in an unsubsidized or subsidized job. Job placement is the result of job finding and job matching.

"Job search" means a structured, time-limited period in which the participant is required to search for employment. To complete the job search, the participant must search and apply for a set number of jobs.

"Job skills training" means training in technical job skills or required knowledge in a specific occupational area in the labor market.

"Local agency" or "local department" means any one of the local social services or welfare agencies throughout the Commonwealth which administers the VIP program.

"Minor parent" means any parent under 18 years of age.

"On-the-job training" means training which is provided by an employer during routine performance of a job.

"Parent" means a mother or father, married or unmarried, natural, or adoptive following entry of an interlocutory order. The parent may be a minor parent.

"Participant" means an AFDC or AFDC-UP recipient who is participating in the VIEW program.

"Participating family" means an assistance unit including a parent who participates in the Virginia Initiative for Employment Not Welfare (VIEW) Program.

"Part-time unsubsidized employment" means employment of at least eight hours but less than 30 hours per week and for which no JOBS, VIEW, AFDC, or food stamp funds are used to pay the individual's salary.

"Post-secondary education" means formal instruction at an institution of higher education or vocational school leading to the attainment of a certificate, an associate degree, or a baccalaureate degree.

"Recipient" means an individual who is presently receiving an AFDC assistance payment or whose eligibility exists even though the assistance payment is zero.

"Recipient family" means an assistance unit in which the caretaker-relative is a parent of the eligible child and the parent's needs may or may not be included on the grant.

"Sanction" means to reduce or suspend a participant's AFDC grant or food stamp allotment or both, where applicable, for noncompliance with these regulations or the statute.

"School" means (i) any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth; or (ii) any private or parochial school that offers instruction at any level or grade from kindergarten through grade 12.

"Support services" means services such as child care or transportation provided to program participants to enable the participant to work or to receive training or education which are intended to lead to employment.

"Time limitations" means a specified period of time, under the statute, to receive AFDC.

"Transitional support services" means child care, transportation or medical assistance provided to working participants whose AFDC has been terminated either voluntarily although still eligible for AFDC or involuntarily due to time limitations.

"Truant" means a child who is (i) absent, unexcused, for 10 or more days during a month, (ii) absent, unexcused, for at least eight but not more than nine days in each of two consecutive months, or (iii) not enrolled in school at any time during the month.

"Unsubsidized employment" means employment in which no government funds are used to subsidize directly the wages earned by a participant.

"Virginia Initiative for Employment Not Welfare" or "VIEW" means the Job Opportunities and Basic Skills Training Program as implemented in the Commonwealth.

"Virginia Independence Program" or "VIP" means the program in the Commonwealth of Virginia which is made up of the AFDC Program and the Virginia Initiative for Employment Not Welfare.

"Work activity" means participation in unsubsidized employment, FEP, part-time work, community work experience, or on-the-job training.

PART II.

ELIGIBILITY REQUIREMENTS.

22 VAC 40-35-20. Cooperation in identifying the parent.

A. As a condition of eligibility, the applicant or recipient must identify the parents of the child for whom aid is requested at the time of application. If the applicant is not certain of the child's paternity, he shall identify all individuals with whom the mother had sexual intercourse who may be the father.

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B. Cooperation shall mean all of the following actions necessary for the location of noncustodial parents and the establishment and collection of child support owed to the person applying for or receiving public assistance:

1. Providing the first and last name of the individual against whom paternity or an obligation to provide support is sought to be established, modified, or enforced.
2. Providing additional informational items sufficient to verify the parent's identity including, at a minimum, three of the following: the noncustodial parent's social security number; race; date of birth; place of birth; telephone number; address; schools attended; occupation; employer; driver's license number; make and model of motor vehicle; motor vehicle license plate number; places of social contact; banking institutions utilized; and names, addresses or telephone number of parents, friends, or relatives.
3. Appearing at an office of the local social services agency or the Division of Child Support Enforcement as necessary to provide verbal or written information or documentary evidence known to, possessed by, or reasonably attainable by the applicant.
4. Appearing as a witness at judicial or administrative hearings or proceedings.
5. Providing information, or attesting to the lack of information, under penalty of perjury.

C. If the caretaker-relative is not a parent of the child for whom aid is requested or received, subdivisions B 1 and 2 of this section shall not be required.

22 VAC 40-35-30. Cooperation in establishing paternity.

A. As a condition of eligibility, the caretaker-relative shall cooperate, as defined in 22 VAC 40-35-20, with the Division of Child Support Enforcement (DCSE) and the local department of social services in establishing paternity.

B. If the caretaker-relative does not cooperate, the adult portion of the grant shall be denied or terminated until the individual has disclosed the required information.

C. If, after six months of receipt of AFDC, paternity has not been established and the local department determines that the caretaker-relative is not cooperating in establishing paternity, the local department shall terminate the entire grant for a minimum of one month and until cooperation has been achieved. An individual whose AFDC case was terminated due to such noncooperation must cooperate and file a new application for AFDC to receive further benefits.

22 VAC 40-35-40. Diversionary assistance program eligibility criteria.

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency;

2. The assistance unit meets AFDC requirements specified in § 63.1-105 of the Code of Virginia; and

3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum AFDC amount for 120 days that the family would otherwise be eligible to receive. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for AFDC for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a 60-month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 45 days of the date of the receipt of the signed application, whichever occurs first.

22 VAC 40-35-50. School attendance.

A. The Virginia Department of Social Services shall develop procedures with the Department of Education to receive notification from local school divisions of any student who is truant. If notification is received from another source, the local department shall verify such truancy by contacting the school.

B. When verified by the school of such truancy, the local social services department shall send written notice to the caretaker-relative advising him that the truant recipient is in jeopardy of losing eligibility for AFDC benefits. The caretaker-relative must contact the local department within five days of the notice to cooperate in developing a plan to achieve compliance with compulsory school attendance laws. The notice must also specify that failure to contact the local department will result in the truant recipient's ineligibility for AFDC due to noncooperation.

C. If the local department of social services denies or terminates AFDC for noncompliance, the caretaker-relative shall notify the local department in writing of the truant individual's compliance with this section and file a new application for AFDC. The local department shall verify compliance by contacting the school.

22 VAC 40-35-60. Minor parent residency requirement.

A. To be eligible to receive AFDC, a minor parent shall reside in the home maintained by his parent or person standing in loco parentis unless he meets the good cause exception outlined in subsection B of this section. The local department shall ensure that the following priority order for the minor parent's living arrangements is enforced: in a home maintained by a parent, other adult relative, legal guardian, or other adult acting in place of a parent.

B. The minor parent residency requirement shall not apply if the local department of social services determines, by clear and convincing evidence, that the physical or emotional health or safety of the minor parent or his dependent child would be jeopardized if the minor parent and dependent lived in the same residence with the minor parent's parent or person standing in loco parentis. Such a claim shall be corroborated by evidence such as court, medical, criminal, child protective services, psychological, or law-enforcement records.

C. The local department of social services shall maintain a list of available housing to be used to refer a minor parent who is in need of an adult-supervised supportive living arrangement. If the local department of social services makes a referral, it will be deemed that the local department has made diligent efforts to locate such housing.

D. As a condition of eligibility, the minor parent shall reside at the local housing to which he is referred by the local department.

22 VAC 40-35-70. Limitation on AFDC benefits.

A. A recipient family is not entitled to an increase in AFDC benefits if the mother of such recipient family conceives or gives birth to an additional child during the period of the family's eligibility for financial assistance or conceives a child within the six months immediately following case closure.

B. Applicants for AFDC financial assistance shall receive notice of the provisions of this section at the time of application. At application or redetermination, such applicant or recipient shall sign a notification acknowledging that they have read and understand the notice.

C. The provisions of this section shall not apply to a child born or adopted during the 10 months following the implementation effective date nor to a child born or adopted during the 10 full calendar months following the month in which the initial assistance check is issued.

D. The provisions of this section shall apply equally to recipient families who adopt a child except that the provision shall be applied using the date of entry of the interlocutory order instead of the child's birthdate.

PART III.

VIRGINIA INITIATIVE FOR EMPLOYMENT NOT WELFARE (VIEW).

22 VAC 40-35-80. Participant eligibility.

A. Individuals unable to participate because of a temporary medical condition that prevents entry into employment or training, as determined by a physician, must provide to the local department a written statement from such physician to specify that he is incapacitated, the nature and scope of the incapacity, and the duration of the incapacity. The worker must reevaluate the participant's incapacity at the time prescribed by the medical statement or every 60 days, whichever comes first. The recipient must provide verification that he continues to be incapacitated.

B. Any individual who is the sole caregiver of another member of the household who is incapacitated, and whose presence is essential for the care of the other member on a

substantially continuous basis, shall be exempt from participation in VIEW. Incapacity is determined by receipt of Social Security Disability Benefits or Supplemental Security Income. The sole other condition under which an individual may be determined incapacitated is by a written medical statement from a physician.

C. AFDC recipients who meet an exemption from participation in VIEW may volunteer for the program.

22 VAC 40-35-90. Services.

A. The participant shall have the primary responsibility to arrange transportation to be employed or participate in activities required by the Agreement of Personal Responsibility. Transportation shall be provided only when the participant is unable to make the necessary arrangements.

B. The local department shall provide transitional medical assistance in accordance with the Department of Medical Assistance Services State Plan and regulations.

C. The local departments may provide those services itemized in § 63.1-133.46 C of the Code of Virginia.

22 VAC 40-35-100. VIEW activities.

A. VIEW recognizes that parents have the obligation to support their children through work/employment.

B. VIEW shall recognize clearly defined responsibilities and obligations on the part of public assistance recipients. VIEW shall require an Agreement of Personal Responsibility and the obligation to seek and obtain employment. Refusal to sign the Agreement of Personal Responsibility shall result in termination of AFDC and food stamps. The Agreement of Personal Responsibility shall be written for each nonexempt participant specifying, among other applicable requirements, the following:

1. The participant's obligations and responsibilities:

a. That it is the participant's responsibility to seek employment to support his own family.

b. That it is the participant's responsibility to participate in assignments made by the case manager.

c. That it is the participant's responsibility to notify the case manager of any change in the participant's circumstances which would impact the participant's ability to satisfactorily participate in the program.

d. That it is the participant's responsibility to accept a job offer. Refusal to accept a job offer will result in the loss of the participant household's AFDC and food stamps. Loss of food stamps for refusal to accept a job offer will result in the entire household's food stamp allotment being terminated when the participant is the head of household. If the participant is not the head of the household, only the participant's prorata share shall be removed from the allotment.

e. That it is the participant's responsibility to arrange and find transportation and day care. The case manager will assist the participant in those instances

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in which the participant has tried but has been unable to find transportation.

2. Explanation of the two-year time limit.

C. Modification of the Agreement of Personal Responsibility shall not impact or change the two-year time limit for receipt of AFDC benefits.

D. A VIEW participant who does not meet an exemption and who is not employed in unsubsidized employment within 90 days of receipt of AFDC shall be required to participate in a work activity. The department shall ensure that participants are assigned to one of the following employment categories in priority order not less than 90 days after AFDC eligibility determination:

1. Unsubsidized private sector employment (full-time, part-time or temporary) is the preferred employment category. A participant shall be required to accept any offers of suitable employment as defined in § 60.2-618 of the Virginia Unemployment Compensation Act.

2. Subsidized full-time employment as follows:

a. The department shall conduct a work activity which shall be known as the Full Employment Program (FEP), which shall replace AFDC and food stamp benefits with subsidized employment.

b. The local department, employer and the full employment participant shall sign a written agreement. At the expiration of this full employment agreement or when the participant leaves FEP, he will be reassessed and a modified Activity and Service Plan will be developed to reassign the participant to an appropriate employment category.

c. The employer is reimbursed for the wages paid to the participant up to the combined value of the participant's AFDC and food stamps as contained in the agreement signed between the department and the employer.

(1) The employer subsidy will be based on the actual hours the participant works.

(2) The value of the participant's AFDC and food stamp benefits will be based on the benefits received over the period of assignment to a Full Employment Program placement.

3. Community work experience.

a. If the participant cannot be placed into an unsubsidized job or Full Employment Program, the participant must be placed into community work experience. The department and local departments shall expand the community work experience program authorized under the Job Opportunity and Basic Skills Training Program (JOBS) to include job placement in community work experience programs which serve a useful public purpose as provided in § 482 (f) of the Social Security Act.

b. The department and local departments shall work with other state, regional, and local agencies and

governments in developing job placements. Placements shall be selected to provide skills that will make the participant more employable and serve a public function. Participation in community work experience shall be for an initial period of six months. Program participants shall not displace regular workers.

c. At the expiration of the community work experience assignment or when the participant leaves community work experience, he will be reassessed and a modified Activity and Service Plan will be developed to reassign the participant to an appropriate employment category.

d. There shall be no sick leave benefit attached to this component since participants work in exchange for their AFDC and food stamp benefits. Participants who are ill or incapacitated will continue to receive their benefits.

4. On-the-job training must be provided by a specific employer in order to be considered a work activity in VIEW.

E. Other VIEW activities in conjunction with work:

1. Education.

a. Education may only be provided in conjunction with work-related activities during the participant's two-year time period.

(1) Only eight hours per week of community work experience hours can be provided for educational activities during the participant's initial six-month placement in community work experience. After six months of participation in community work experience, the number of hours required in the work activity can be reduced to allow participation in education to further the participant's employability.

(2) Participants who enroll into education or training programs prior to coming in VIEW shall be required to meet the requirements of the program.

b. Post-secondary education Participants assigned to post-secondary education should have demonstrated the capability to successfully complete the educational activity in the prescribed time period in an occupational area for which there is demand in the community.

2. Job skills training may only be provided in conjunction with work-related activities during the participant's two-year time period. The choice of occupational skills training offered will vary in each jurisdiction depending upon local labor market conditions. However, skills training must be related to the types of jobs which are available or are likely to become available in the community.

22 VAC 40-35-110. Sanctions.

Local departments of social services shall be authorized to sanction participants in the Food Stamp Program as allowed pursuant to 7 CFR 273.7(g) and in the AFDC Program up to

the full amount of the AFDC grant for noncompliance, without good cause as defined by the JOBS State Plan, as follows:

1. A participant assigned to the Full Employment Program who does not work the required hours will only be paid for the actual hours worked. Participants that are terminated from FEP by the employer due to problems with attendance or performance or both will be sanctioned the full amount of the AFDC and food stamp benefits.

2. A recipient assigned to VIEW who is determined to be in noncompliance with the VIEW Program shall be sanctioned as follows:

a. For the first offense, the full amount of AFDC benefits for the family shall be suspended for at least one calendar month or until the individual complies with the program requirements, whichever is longer.

b. For the second offense, the full amount of AFDC benefits for the family shall be suspended for at least three calendar months or until the individual complies with the program requirements, whichever is longer.

c. For the third or subsequent offenses, the full amount of AFDC benefits for the family shall be suspended for at least six calendar months or until the individual complies with the program requirements, whichever is longer.

22 VAC 40-35-120. Hardship exceptions.

A. In certain circumstances, hardship exceptions may be made to the time limitations for receipt of AFDC benefits. If the participant requests a hardship exception, the local department shall make an evaluation of participation while in VIEW. This evaluation will determine if a hardship exception may be granted to allow the participant to continue receiving AFDC and to continue to participate in VIEW. A participant may apply for only one hardship exception.

A participant is not eligible for a hardship exception unless he has complied with the requirements of the program, which are satisfactory participation in assigned program activities, not having been sanctioned more than once during the two-year period for failing to comply with the requirements of the program, and not leaving a job, without good cause as defined by the JOBS State Plan, at any time during the program.

B. If the above criteria are met, a hardship exception may be granted if one of the following conditions exists:

1. If the participant has been actively seeking employment by engaging in job-seeking activities required pursuant to § 60.2-612 of the Code of Virginia and is unable to find employment. The local department may extend benefits for up to three months to allow the participant to find employment.

2. If the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's two-year time limit elapsed was 10% or greater. In order to qualify for this exception the

participant must also be actively seeking employment as defined in subdivision 1 of this subsection.

3. If the program participant loses his job as a result of factors unrelated to his job performance. Factors unrelated to job performance are defined as those situations in which the Virginia Employment Commission would determine that the individual would be eligible for unemployment compensation if the participant had worked sufficient hours to qualify. The local department may extend benefits for up to three months to allow the participant to find employment.

4. If extension of benefits for up to one year will enable a participant to complete employment-related education or training and the participant had been making satisfactory progress per program requirements.

C. For hardships as provided in subdivisions B 1 and B 3 of this section, the locality shall refer the case to a panel composed of the Commissioner of the Virginia Department of Social Services, the Commissioner of the Virginia Employment Commission, and the Executive Director of the Governor's Employment and Training Department. The panel shall evaluate each request individually and grant or deny the request for an extension.

D. Participants granted a hardship exception under subdivisions B 2 and B 4 of this section shall be reevaluated at least every 90 days to determine if a basis for the hardship exception continues to exist. If a hardship exception is granted, the participant must continue in the program and work activities.

PART IV. APPEALS.

22 VAC 40-35-130. Appeals process.

A participant aggrieved by the decision of a local board granting, denying, changing, or discontinuing assistance may appeal such decision pursuant to § 63.1-116 of the Code of Virginia. A participant cannot appeal the provisions of the Agreement of Personal Responsibility which was mutually developed by the participant and the local agency.

DOCUMENT INCORPORATED BY REFERENCE

Title IV-F, JOBS, State Plan Preprint, Department of Social Services, eff. October 1, 1994

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
VIEW PROGRAM

VIEW AGREEMENT OF PERSONAL RESPONSIBILITY

This agreement lists your responsibilities as a participant in the VIEW program. If you refuse to sign this Agreement of Personal Responsibility, you will lose your AFDC benefits.

VIEW PROGRAM RESPONSIBILITIES

I understand that AFDC is a temporary assistance program and that I am responsible for:

- Recognizing that because AFDC is temporary assistance, I need to work to become self-sufficient and support my family;
- Looking for and accepting employment;
- Participating in assignments from my case manager;
- Notifying my case manager immediately of changes in my circumstances;
- Answering all letters and calls from my case manager in a timely fashion;
- Keeping appointments with my case manager in a timely manner;
- Arranging child day care and transportation to allow me to participate in the VIEW program. If I am unable to arrange child day care and transportation, my case manager may be able to assist with these services.

VIP/VIEW PROGRAM RULES

To continue to receive AFDC benefits, I must enroll in the VIEW Program.

Once enrolled in the VIEW Program, I can receive up to 24 months of AFDC benefits.

I will be assigned to work activities during my 24-month eligibility period.

I may choose to stop receiving AFDC and Food Stamps at any time and apply at a later date, but I will not receive more than 24 months of AFDC benefits in a 60 month period.

If I do not participate in the VIEW Program, I will lose my household's AFDC grant and may lose my Food Stamp benefits. This is considered a sanction.

Any month that I am sanctioned for not participating will count as one of my 24 benefit months.

If I refuse a job offer without good cause, I will be sanctioned and lose my household's AFDC benefits.

If I quit a job without a good cause, I will be sanctioned and lose my household's AFDC and Food Stamp benefits.

VIEW OPPORTUNITIES AND REQUIREMENTS

Because the rules for counting income and rewarding work have changed, I may be able to keep more of my AFDC benefits when I get a job.

When I find employment and leave AFDC, I may be eligible for up to 12 months of child day care, transportation and medical assistance.

I may receive valuable work experience and/or training through the VIEW Program.

I may own a vehicle with a value of \$7,500 without its value affecting my benefits.

I understand that it is my responsibility to take advantage of the opportunities afforded me by the VIP/VIEW program. By taking advantage of these opportunities, I will be assisting my family in achieving economic independence.

I understand that I must sign this agreement to continue to receive AFDC benefits. Refusal to sign this agreement will result in the loss of my AFDC benefits.

Signing this agreement will cause my 24-month eligibility agreement to begin on _____ with a scheduled end date of _____.

Hardship exceptions may be granted in very limited circumstances to extend the 24 month eligibility period to persons who demonstrate an extreme hardship, if I have met the following conditions:

1. I attended and participated in all of the activities to which I was assigned;
2. I did not receive more than one sanction during the 24 months of VIEW program participation; and
3. I did not leave employment without good cause during my VIEW program participation.

FAIR HEARING RIGHTS:

I have the right to file an appeal for any agency action which results in a decision which terminates, reduces, or suspends my household's AFDC and/or Food Stamp benefits.

PLEASE CHECK ONE:

- I choose to participate in the VIEW Program.
- I will not sign this agreement and choose not to participate in the VIEW Program, thereby relinquishing any right to AFDC for myself and my family.

Participant _____ Date _____

Case Manager _____ Date _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
VIEW PROGRAM

Participant: _____
Case ID #: _____
Date: _____

VIEW ACTIVITY AND SERVICE PLAN

PLANNED COMPONENT ASSIGNMENT	Planned Begin date	Planned End Date	Planned Weekly Hrs.
Currently employed full-time	_____	_____	_____
Currently employed part-time	_____	_____	_____
Job Search	_____	_____	_____
Job Readiness	_____	_____	_____
Job Development/Job Placement	_____	_____	_____
Full Employment Program	_____	_____	_____
On-The-Job-Training	_____	_____	_____
Community Work Experience	_____	_____	_____
Education	_____	_____	_____
Job Skills Training	_____	_____	_____
Other Work Activity	_____	_____	_____

CURRENT PROGRAM ACTIVITY ASSIGNMENT

(For initial Assessment participant must at minimum be placed into Job Search for 30 days)

Program Activity Assignment	Description/Location	Planned Begin date	Planned End Date	Planned Weekly Hrs.
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Pending Inactive

List reasons for assignment to Pending or Inactive and the steps necessary to resolve problem.

SUPPORTIVE SERVICES

Day Care Transportation Other (please describe)

PARTICIPANT RESPONSIBILITIES FOR CURRENT COMPONENT ASSIGNMENT(S)

AGENCY RESPONSIBILITIES

PARTICIPANT OBLIGATIONS

I understand that I am responsible for keeping the agency informed of my progress and needs. I agree to call the worker/case manager whose name is listed at the bottom of this page if I have a problem that makes it impossible to keep an appointment or if I wish to discuss or change an activity. I agree to continue in my current activity until I have discussed any problem I may have with my worker/case manager.

I understand that if I fail to participate without a good reason my welfare benefits will be stopped.

FOR PARTICIPANTS ASSIGNED TO COMPONENTS

I will carry out the responsibilities as agreed.

FOR PARTICIPANTS ASSIGNED TO PENDING

I understand that I am not actively participating at this time, but the months assigned to this component will count toward my two year time period.

FOR PARTICIPANTS ASSIGNED TO INACTIVE

I understand that I will not actively participate at this time. I also understand that I must answer all calls and letters from agency staff since I may be required to participate in the future.

PARTICIPANT'S SIGNATURE _____ DATE _____

CASE MANAGER'S SIGNATURE _____ PHONE _____

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

EDITOR'S NOTICE: The following regulations filed by Virginia Polytechnic Institute and State University are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: ~~VR 660-01-01~~ 18 VAC 105-10-10 et seq. Traffic and Parking Regulations.

Statutory Authority: § 23-9.2:3 3 of the Code of Virginia.

Summary:

These regulations are established to promote safety and control student, employee and visitor vehicle registration, parking and operation on the campus of Virginia Polytechnic Institute and State University.

18 VAC 105-10-10 et seq. Traffic and Parking Regulations.

CHAPTER 10. TRAFFIC AND PARKING REGULATIONS.

PART I. GENERAL PROVISIONS.

§ 1.1. Mission.

8 VAC 105-10-10. Students, faculty, staff, visitors.

A. The mission of the Parking Services Office is to ~~work toward providing~~ provide safe, convenient, and secure parking areas and to facilitate travel to, from, and within the campus for members of the university community and guests.

B. The university president has appointed an advisory committee so that ~~individuals in~~ members of the university community can comment on parking and transportation problems and make suggestions as to their solution. The Parking and Transportation Advisory Board makes recommendations on general policies relating to traffic and parking matters on campus. Students, faculty members, and staff members are represented on this committee.

§ 1.2. 8 VAC 105-10-20. General information.

A. Traffic and parking regulations, as published by the university and in the *Virginia Register*, will be administered by the Parking Services Office and the University Police Department. These regulations, pursuant to authority granted by Virginia state statute to the board of visitors, are enforceable as laws of the Commonwealth.

B. Regulations are needed to aid in safety and orderly conduct of university business, as well as to provide parking facilities within the limits of available space. Students are to obey these regulations as a condition of attendance and faculty and staff members are to obey them as a condition of employment.

C. Changes in these regulations and notices about parking regulations for special events are official when published in the *Spectrum* and *Collegiate Times* and when listed on the university's administrative display system on the mainframe computer (PROFS or CMS information screens).

D. If you have any questions, comments, or suggestions, please call the Parking Services Office at (540) 231-3200 or visit the Visitor Information Center on Southgate Drive.

E. The university shall have no responsibility for loss or damage to any vehicle, or its contents, operated or parked on the Virginia Tech campus.

PART II. MOTOR VEHICLE REGISTRATION.

§ 2.1. 8 VAC 105-10-30. Permit parking.

A. The purchase of a permit does not guarantee a parking place, but merely allows for legal parking in an appropriate area.

B. Permits allowing parking in specific areas of the campus. Permits are required from 7 a.m. to 5 p.m., Monday through Friday, ~~whenever the university is open for business, whether classes are in session or not. This includes semester breaks. (unless signed otherwise). This is in effect whenever the university is open for business, including when classes are not in session and during semester breaks.~~

§ 2.2. 8 VAC 105-10-40. Who must register.

A. All motor vehicles, motorcycles, and motor scooters on campus requiring state license plates are required to be registered with the Parking Services Office. Vehicles operated by the faculty, staff, and students in connection with their employment or attendance at Virginia Tech are required to display a parking permit before parking on campus or on university-leased property.

B. Visitors, vendors, contractors, and university employees who are employed at university remote sites and visiting the university on a short-term basis (30-day maximum) should register for a complimentary visitor permit.

C. Vehicle registration is valid until the registrant is no longer affiliated with the university as a student, faculty, or staff member, or until the permit expires. ~~Faculty and staff permits are to be returned to Parking Services when an employee leaves the university. All parking permits are the property of the university and must be surrendered to Parking Services when university affiliation either changes or ceases.~~

§ 2.3. 8 VAC 105-10-50. How to register.

A. General.

1. An individual may register more than one vehicle since the clingtag style permit can be moved from one vehicle to another. Individuals having two vehicles parked on campus at the same time must have each vehicle registered and displaying a permit.

2. A vehicle can be registered to only one person. Only one permit type per vehicle is allowed. Sharing of permits and other unauthorized use may result in a \$100 fine. If a vehicle is shared by two persons needing different permit types, the Parking Services Office needs to be notified before the vehicle can be registered.

B. Student registration.

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A. 1. Bring your vehicle information from the Department of Motor Vehicles and Virginia Tech ID to the Visitor Information Center on Southgate Drive to purchase a parking permit. The vehicle must be owned by the student or an immediate family member.

2. Vehicles are to be registered no later than the end of the first week of the semester. Students must be parked in designated student areas at all times. This applies when the university is open for business, including when classes are not in session and during semester breaks.

~~B. Students are required to show their vehicle registration. The vehicle must be owned by the student or an immediate family member.~~

~~C. An individual may register more than one vehicle since the hangtag style permit can be moved from one vehicle to another. Individuals having two vehicles parked on campus at the same time must have each vehicle registered and displaying a permit.~~

~~D. Only one permit type per vehicle is allowed. Sharing of permits and other unauthorized use may result in a \$100 fine. If a vehicle is shared by two persons needing different permit types, the Parking Services Office needs to be notified before the vehicle can be registered.~~

~~E. Vehicles are to be registered no later than the end of the first week of the semester. Student vehicles must be parked in designated student areas at all times, including the first week of classes and semester breaks.~~

C. Faculty/staff registration.

1. Employees must show a Faculty/Staff ID to purchase a permit. Wage employees need to get an ID card from the Personnel Office at Southgate Center.

2. Vehicles are to be registered no later than the expiration date of the permit. Employees must register their vehicle(s) before parking on campus. Employees reregistering their vehicle(s) must do so no later than the expiration date on the previous year's permit.

3. Full-time salaried employees are eligible to purchase a full-year faculty/staff permit through payroll deduction. Wage employees are not eligible for payroll deduction at this time.

§-2.4. 8 VAC 105-10-60. How to display.

A. The registration procedure is not complete until the permit is properly displayed on the vehicle; ~~permits must be displayed in the proper location and so that the maroon side can be seen through the windshield by enforcement officers. (e.g., inside the vehicle on lower four inches of back window, driver's side). The permit must be displayed so that it is readable through the window by enforcement officers.~~

B. The permit is to be displayed on the rearview mirror, ~~facing the windshield.~~ Motorcycle permits are to be displayed on the front fork. Bumper stickers are available for vehicles that cannot be locked (e.g., Jeep CJ, Suzuki Samuri, etc.) and are to be affixed to the driver's side rear bumper.

C. A vehicle displaying two different types of permits (e.g., displaying a faculty/staff permit and a commuter student permit at the same time) may be ~~ticketed~~ cited.

§-2.5. 8 VAC 105-10-70. New vehicles.

Original permits ~~(if hangtag style)~~ (other than bumper style) can be transferred to a new vehicle if Parking Services is notified of the new vehicle information. If the permit is ~~other than a hangtag style bumper style~~, the original permit must be returned to the Parking Services Office to receive a free replacement permit for the new vehicle.

§-2.6. 8 VAC 105-10-80. Lost or stolen permits.

A. There will be no refund or free replacement for lost or stolen ~~decals or hangtags~~ permits. Replacement permits may be purchased for \$5 ~~\$6.00~~ after filing a lost/stolen permit report at the Parking Services Office. Purchasers are encouraged to lock their vehicles and safeguard their permits.

B. If the original permit is found, ~~the replacement permit it~~ must be returned to the Parking Services Office. Failure to do so could result in a \$100 unauthorized-use fine.

8 VAC 105-10-85. Return check policy.

If a check for a parking permit is returned for insufficient funds, the parking permit will be considered null and void. Parking citations will be written each time your vehicle is parked on campus. Parking Services reserved the right to tow the vehicle when three or more unpaid citations have accumulated. The Office of the University Bursar will assess a return check fee on each returned check.

§-2.7. 8 VAC 105-10-90. Refunds policy.

As a general rule, refunds for parking permits and ~~tickets~~ citations are not granted. Under special circumstances however, Parking Services may use its discretion in granting certain refunds.

To be considered for a refund, the permit or permits must be returned and a refund application form must be completed. Applications for a full refund must be submitted within five working days of the permit purchase date or by the end of the first week of fall semester classes.

Applications for semester refunds must be submitted by the end of the first week of classes of the semester.

PART III.

PERMIT TYPES: PERMIT CLASSIFICATIONS.

§-3.1. 8 VAC 105-10-100. Issuance of permits.

All parking permits for the categories listed in this part are issued by the Parking Services Office on Southgate Drive.

§-3.2. 8 VAC 105-10-110. Resident (on campus) permit.

This ~~The~~ resident (on campus) permit allows parking only on the right side of the Resident Lot (fenced lot at west end of Washington Street), the west end of Lot D (Stadium Lot, between Lane Stadium and Southgate Drive), and the overflow lot beyond the golf course. Parking is not permitted in Lot D (Stadium Lot) from 11 p.m. the night before any

home football game until the game has ended as noted in 8 VAC 105-10-390.

PART IV. PERMIT TYPES.

~~§ 3.3.~~ 8 VAC 105-10-120. Commuter (off campus) permit.

A. ~~This~~ *The commuter (off campus) permit allows parking in the Commuter Lot (between Perry Street and Prices Fork Road); the left side of the Resident Lot (nearest the Vet-Med School on Duck Pond Drive at Washington Street); the commuter section of the Wallace Hall Lot Wallace/Litton Reeves Lot; and the overflow lot beyond the golf course at the end of the Duck Pond. Commuter permit holders may also park in designated portions of the Coliseum Parking Lot and along Stadium Road (in marked parking spaces), except at specific times as noted in the Football and Basketball Parking Restrictions sections of these regulations 8 VAC 105-10-390.*

B. Parking in commuter lots is prohibited from 2 a.m. to 6 a.m. unless prior arrangements have been made with the Parking Services Office (7:30 a.m. to 5 p.m., Monday through Friday) or the University Police Department all other times.

~~C. Students please note: if student status changes to faculty/staff status before the expiration date on the permit, the student permit must be exchanged for a faculty/staff permit within five working days.~~

8 VAC 105-10-125. Graduate.

A. ~~This~~ *The graduate permit allows parking in all areas listed above in the commuter section. In addition to this, graduate students who qualify for a Teaching Assistant (TA) permit (see the Graduate School at 202 Sandy Hall for details) are allowed to park in the TA spaces designated by signs in the B-lot and the lot between Wallace/Litton Reeves and Hillcrest.*

B. *Students please note: If student status changes to faculty/staff status before the expiration date on the permit, the student permit must be exchanged for a faculty/staff permit within five working days.*

~~§ 3.4.~~ 8 VAC 105-10-130. Faculty/staff permit.

A. ~~This~~ *The faculty/staff permit allows parking in any legal parking area on campus not restricted by signs (e.g., visitors, service vehicles, CEC, teaching assistants, etc.). New employees, see the New Employee (Temporary) Parking Permits section (§ 3.6) 8 VAC 105-10-150.*

B. Faculty/staff permits are issued to salaried (full or part-time) and wage employees of the university. Graduate teaching assistants, graduate research assistants, and part-time salaried or wage employees who are students (taking more than six hours during fall or spring semesters; ~~one or more hours during the summer semester~~) are not authorized to purchase a faculty/staff permit. *Students with wage jobs at Virginia Tech over the summer are not eligible to purchase a faculty/staff permit.*

C. If faculty/staff status changes to student status before the expiration date on the permit, the faculty/staff permit must be exchanged for a student permit within five working days.

8 VAC 105-10-135. Full year permits.

Full year permits go on sale in mid-July and are valid from then until the expiration date on the permit.

8 VAC 105-10-137. Semester permits.

Semester permits go on sale in mid-July and are valid from then until December 31 of the current year.

~~§ 3.5.~~ 8 VAC 105-10-140. Daily permits.

A. ~~These~~ *Daily permits are available for \$1 per day for those who drive only occasionally or who bring a second vehicle. Daily permits may be purchased in advance and validated on the date of use.*

B. A daily permit allows parking in the area indicated on the permit for any one day selected by the purchaser. The date of use will be blackened in with a pen or marker; pencil markings are not acceptable to validate the permit. The misuse, resale, fabrication, alteration, or unauthorized transfer of daily permits will result in a \$100 fine.

8 VAC 105-10-145. Clingtag permits.

Clingtag permits are available for the majority of vehicles on campus and can be purchased for the full year or the semester.

8 VAC 105-10-147. Bumper permits.

Bumper permits are available for motorcycles and vehicles that cannot be locked (e.g., Jeep CJ, Suzuki, Samuri, etc.). These permits can be purchased for the full year or the semester. Only one complimentary permit will be given out with the purchase of a regular permit at the regular price.

~~§ 3.6.~~ 8 VAC 105-10-150. New employee (temporary) parking permits.

A. All first-time new wage employees of the university can receive a temporary parking permit. The new employee temporary permit will be valid for not more than 30 calendar days, beginning with the first day of paid employment.

B. The new employee must bring an employment validation form from the hiring department to the Parking Services Office.

C. It is recommended that this process be completed the first day of employment. Unauthorized use of these permits carries a \$100 fine to the person displaying such a permit.

D. Full-time Virginia Tech students (taking more than six hours during fall or spring semesters; ~~one or more hours during the summer semesters~~) who are employed by the university are not eligible for temporary employment permits.

E. *Virginia Tech students taking classes are not eligible for temporary employment permits.*

~~§ 3.7.~~ 8 VAC 105-10-160. Visitor permits.

A. *Visitors (nonstudents or nonfaculty/staff) may park in any faculty, staff, visitor, or student parking space if they have a valid visitor parking permit and if space is not restricted by*

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signs. Visitor parking permits are available through the Visitor Information Center on Southgate Drive (7:30 a.m. to 5 p.m., Monday through Friday) or at the University Police Department in the Maintenance Complex on Southgate Drive all other times. Visitor permits must be signed and dated by an authorized parking services or police official and displayed 7 a.m. to 5 p.m., Monday through Friday.

B. University employees who are employed at university remote sites and are visiting the university on a short-term basis (30-day maximum) may register for a visitor permit.

C. Metered parking spaces are also available for short-term visitors on campus. Visitors with parking permits may not park free at parking meters. Visitors may park in the ~~CEG~~ *Parking Lot Donaldson Brown Hotel and Conference Center (DBH) Parking Lot* at the corner of College Avenue and Otey Street across from the ~~Continuing Education Center DBH~~ with a valid visitor permit.

~~§ 3-8.~~ *8 VAC 105-10-170. Vendors and contractors.*

A. ~~These~~ *Vendors, contractors, and other others* who visit the campus frequently can apply for a long-term visitors pass if they present a letter from their company or supervisor. These letters should include the name, social security number, and license plate number of each person who needs a pass, as well as a contact person and contact phone number.

B. *Students are not eligible for vendor or contractor permits. Students must park in designated student areas 7 a.m. to 5 p.m., Monday through Friday.*

~~§ 3-9.~~ *8 VAC 105-10-180. Turf permits.*

These Turf permits are available for individuals needing to park on the grass. This permit does not allow parking on sidewalks. These permits are issued by the Parking Services Office.

8 VAC 105-10-185. Retiree permits.

Retiree permits are available from Personnel Services at 404 Clay Street.

8 VAC 105-10-187. Teaching assistant permits.

Teaching assistant permits are available for graduate students who are teaching a class. See the Graduate School at 202 Sandy Hall for details.

~~PART IV.~~ PART V.

HANDICAP AND TEMPORARY MEDICAL DISABILITY PARKING.

~~§ 4-1.~~ *8 VAC 105-10-190. Special assistance.*

Note: If an individual requires special assistance, the parking manager should be notified at 231-3200 for special arrangements.

~~§ 4-2.~~ *8 VAC 105-10-200. Handicap parking.*

A. ~~These~~ *Handicap parking* spaces on campus are exclusively for those persons displaying state-authorized DMV handicap license plates or permits. These permits are available to any individual who has a disability of six weeks or longer duration. The Virginia Department of Motor Vehicles

office nearest Virginia Tech is located at Route 114 (Peppers Ferry Road) and Walters Drive in Christiansburg (telephone (540) 382-5000). Only state DMV handicap permits allow parking in handicap spaces. State DMV handicap permits also allow free parking at metered spaces.

B. Faculty members, staff members, and students with handicap passes or plates are ~~required~~ *required* to obtain a Virginia Tech parking permit to park on campus.

C. Unauthorized vehicles parked in handicap spaces will be ticketed and towed at the owner's expense. See Part ~~X~~ *XI* on towing for details on recovering a car.

D. Handicapped individuals may also use the Blacksburg Transit Para-Transit system, which has lift-equipped vehicles for on- and off-campus transportation needs. Call (540) 961-1803 for more information.

~~§ 4-3.~~ *8 VAC 105-10-210. Temporary medical disability permits (TMD).*

A. A Virginia Tech temporary medical disability permit (TMD) is available for students having mobility impairments lasting six weeks or less. If the disability qualifies for a handicap permit, it should be obtained from the Virginia Department of Motor Vehicles. Because of Virginia state laws, TMD permits are not valid at handicap spaces at any time.

B. TMD permits allow students to park in faculty/staff area, and are valid only with a Virginia Tech commuter, *graduate* or resident parking permit. Persons with TMD passes may park in metered spaces as long as the meter is kept current with the proper amount of coins.

C. A temporary medical disability permit can be obtained at the office of Parking Services by presenting a request slip from the Student Health Services or a doctor's statement. This documentation must include how long the disability requires special parking.

D. Unauthorized use of a TMD permit carries a \$100 fine to the person displaying such a permit.

~~PART V.~~ PART VI. SPECIAL-NEEDS PARKING.

~~§ 5-1.~~ *8 VAC 105-10-220. Temporary or short-term parking.*

Permission may be obtained from the Parking Services Office (7:30 a.m. to 5 p.m., Monday through Friday) or the University Police Department all other times for temporary or short-term parking for emergencies and for loading and unloading only. Permission must be obtained before parking, and only the Parking Services Office and the University Policy Department are authorized to grant such permission.

Anyone with a parking problem should contact the Parking Services Office to seek a possible solution before parking illegally. Emergency flashers or signs on a windshield indicating the vehicle is disabled or loading/unloading are not acceptable notification.

~~§ 5-2.~~ *8 VAC 105-10-230. Loading/unloading.*

A. Thirty minutes is the maximum time allowed for loading and unloading. A current Virginia Tech parking permit and

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prior authorization are required from 7 a.m. to 5 p.m. weekdays to use this service. Authorization can be obtained by calling Parking Services 7:30 a.m. to 5 p.m. Monday through Friday, or the University Police Department all other times. Please have available your license plate number and permit number.

B. To load vehicles for the weekend, only resident permit holders may park in most faculty/staff areas near residence halls after 2:30 p.m. on Fridays. You are allowed a maximum of 30 minutes and a call to the Parking Services Office is not necessary. However, Owens and Dietrick Dining Hall lots are reserved exclusively for faculty and staff parking ~~24 hours a day~~ 6 a.m. to 4 p.m., seven days a week.

§ 5-3. 8 VAC 105-10-240. Disabled vehicles.

A. The Parking Services Office and the University Police Department should be notified immediately if an automobile is disabled. Emergency flashers or signs on the windshield indicating the vehicle is disabled are not sufficient. Any disabled vehicle in a roadway, blocking traffic, creating a hazard, or illegally parked in a handicap space will be towed immediately at the owner's expense. If in a legal parking space, a disabled vehicle is to be removed within 24 hours.

B. The parking lots are not designed or intended for automobile repairs. If repairs become necessary, permission must be secured from the Parking Services Office or the University Police Department. Permission will be granted only for minor repairs and never for more than 24 hours.

§ 5-4. 8 VAC 105-10-250. Special-event/special group parking.

Contact the Parking Services Office at least two weeks prior to the event for special parking arrangements.

§ 5-5. 8 VAC 105-10-260. Residence hall move-in/move out.

Special parking arrangements are in effect for these periods. *One hour is the maximum time allowed for move-in/move-out. Unless otherwise directed, there will be no parking on the grass or on sidewalks.* Call the Parking Services Office for more information.

PART VI. PART VII. ENFORCEMENT.

§ 6-1. 8 VAC 105-10-270. Enforcement authority.

A. Only designated Parking Services and University Police Department employees shall have the authority to enforce the parking rules and regulations herein established.

B. The university reserves the right to prohibit or restrict parking on university-owned or university-leased property for special circumstances. Any individual who accumulates 10 or more unpaid tickets citations in an academic year is considered to be abusing parking privileges and may lose parking privileges on campus for the remainder of that period. Parking Services reserves the right to confiscate the parking permit attached to such a vehicle, and there will be no refund to the owner of that permit. In addition, the vehicle may be towed from campus at the owner's expense.

§ 6-2. 8 VAC 105-10-280. Expired meter.

A. Virginia Tech has parking meters available to meet short-term parking needs of visitors, faculty, staff, and students. Most meters take ~~nickles~~ nickels, dimes, and quarters. The 10 meters nearest the War Memorial Gym are reserved for faculty, staff and visitors only. Parking permits (including visitor permits) never allow parking at meters without paying the meter. State DMV handicap permits do allow free parking at meters.

B. Any parking meter covered with a ~~green~~ white cover indicates "general parking," a yellow cover indicates "no parking," and a red cover indicates "~~faculty/staff parking only.~~" "reserved parking only." A parking space that has a post with no meter head may be used by anyone authorized to park in that area.

C. Meters are enforced from 7 a.m. to 5 p.m., Monday through Friday. Meters in the Bookstore lot are enforced from 7 a.m. to 7 p.m., seven days a week.

D. Please notify the Parking Services Office before moving a vehicle from a defective meter so that the meter may be checked immediately. *Additionally, failure to completely turn the handle on a meter after inserting coins also constitutes an expired meter violation.*

§ 6-3. 8 VAC 105-10-290. Parking in an unauthorized area.

A. Resident and , commuter, and graduate student permit parking is prohibited on campus streets and in faculty/staff parking areas (except where signs designate otherwise) from 7 a.m. to 5 p.m., Monday through Friday. Parking at other times may also be prohibited as announced and/or posted in all parking areas. Overnight (2 a.m. - 6 a.m.) commuter/graduate student parking on campus is prohibited unless prior arrangements have been made with Parking Services (7:30 a.m. to 5 p.m., Monday through Friday) or the University Police Department all other times.

B. To load vehicles for the weekend, only resident permit holders may park in most faculty/staff areas near residence halls after 2:30 p.m. on Fridays for a maximum of 30 minutes. However, Owens and Dietrick Dining Hall lots are reserved exclusively for faculty and staff parking ~~24 hours a day from 6 a.m. to 4 p.m., seven days a week.~~ All dining hall loading dock areas are posted as "No Parking" or "Service Vehicle Parking Only" at all times.

C. The parking lot across from the Donaldson Brown Continuing Education Center (CEC) and in front of Squires is reserved for faculty and staff parking ~~24 hours a day, seven days a week.~~ Visitors and CEC guests may also park in this parking lot. Hotel and Conference Center (DBH) and in front of Squires Student Center is divided into two sections. The left side (closest to Squires) is reserved for faculty/staff from 7 a.m. to 5 p.m., Monday through Friday. Students may park on this side after hours and on weekends. The right side of the DBH lot is reserved for visitors (nonstudents or nonfaculty/staff) 24 hours a day, seven days a week. Only visitors and DBH guests (nonstudents or nonfaculty/staff) are allowed to park in this half of the lot and must display a visitor or DBH parking pass.

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D. Persons receiving an "Unauthorized Area" ticket citation but whose vehicle is registered with the Parking Services Office and parked in an authorized area may request that their ticket citation be voided. ~~This request is only valid if filled out within 10 calendar days of ticket issuance and upon presentation of the permit. To make this request you must complete a void form within 10 calendar days of citation issuance. Forms are available at the Parking Services Office and are to be filled out in person. These forms are necessary to comply with audit procedures. This request may be made a maximum of three times within an academic year. Forms are available at the Parking Services Office for these requests and are necessary to comply with audit procedures.~~

Parking in designated service vehicle spaces (between white-painted control lines) is allowed after hours (5 p.m. to 7 a.m.) and on weekends unless signed otherwise. Service drives at the Field House, Cochrane, Ambler Johnston, Miles, Pritchard, etc. are no parking zones 24 hours a day, seven days a week.

E. Note: If you forget your hangtag on any given day, stop by the Parking Services Office to verify your registration and obtain a temporary one-day permit before parking on campus. There is no charge for this permit.

F. Vehicles not registered with Parking Services prior to parking on campus will receive an "Unauthorized Area" ticket citation.

§ 6.4. 8 VAC 105-10-300. Parking on a yellow curb.

Yellow painted curbs, poles, and lines including those inside the parking lots and at loading docks, indicate no parking. Yellow curbs designate safety zones established by traffic engineers to facilitate free and safe movement of emergency vehicles and other traffic moving into and out of the area.

§ 6.5. 8 VAC 105-10-310. Parking in a no parking zone.

A. Parking is permitted in authorized, clearly identified parking spaces only. Parking is not allowed in or on lawns, grass, loading zones, bus stops, pedestrian crosswalks, handicap spaces, handicap access ramps, yellow lines or curbs, service drives, service vehicle spaces, unmarked areas, and fire lanes without specific authorization. Parking on any sidewalk is prohibited at all times. Bagged or covered signs indicate special purpose or no parking.

8 VAC 105-10-315. Parking in a roadway.

~~B. A general rule to follow is that Parking is permitted only between white-painted control lines; If no control lines exist, do not park there. Roadways designate safety zones established by traffic engineers to facilitate free and safe movement of emergency vehicles and other traffic moving into and out of the area. This applies to all areas whether they are painted yellow or not.~~

§ 6.6. 8 VAC 105-10-320. Other (miscellaneous no parking situations).

~~Parking is not permitted in roadways, occupying multiple spaces (double parking), facing in wrong direction, etc. This~~

~~violation may also include any of the no parking zones mentioned in § 6.5.~~

A. Vehicles are not permitted to occupy multiple spaces (double parking), park facing in wrong direction, etc. Violation may also include any of the no parking zones mentioned in 8 VAC 105-10-315.

B. Motorcycles are allowed to park in designated motorcycle areas denoted by "P" signs ("P" means "any university parking permit"). If parked in a regular vehicle space, the motorcycle must display the permit type required in that lot (e.g., a faculty/staff permit is necessary in any non-motorcycle space within a faculty/staff lot). Vehicles are not to be parked in areas designated for motorcycles.

§ 6.7. 8 VAC 105-10-330. Overtime parking (parking in timed areas).

Timed parking areas (e.g., in front of Burruss, in Shultz lot, at the Duck Pond drop-off spaces by the library, ATM spaces at the bookstore, etc.) are strictly enforced to provide limited, short-term parking for the purposes of brief business in certain areas by faculty, staff and students.

§ 6.8. 8 VAC 105-10-340. Parking in a handicap zone.

Handicap parking spaces on campus are exclusively for those persons displaying state-authorized DMV handicap license plates or permits. Unauthorized vehicles parked in a handicap space will be ticketed and towed at the owner's expense.

§ 6.9. 8 VAC 105-10-350. Unauthorized use of permit.

A. The misuse, resale, fabrication, alteration, or unauthorized transfer of a Virginia Tech parking permit is illegal. Permits are to be used only by the original purchaser, and are required to be purchased from the Parking Services Office. Vehicles displaying lost, stolen, or fraudulent Virginia Tech parking permits will be ticketed, immobilized and/or towed immediately and the campus police notified. Campus police will be notified.

B. "Unauthorized Use of Permit" violations will be assessed against the person who purchased the permit or the person to whom the vehicle is registered with the DMV. An "Unauthorized Use of Permit" ticket citation carries a \$100 fine and may carry a judicial referral and/or criminal charge. Vehicles may also be towed or immobilized.

§ 6.10. Motorcycles.

~~Motorcycles need to be parked in designated motorcycle areas within the parking lots or in a regular space designated by white-painted control lines. The areas set aside for motorcycles correspond to the permit type required in that lot (e.g., a faculty/staff permit is necessary in a motorcycle area within a faculty/staff parking lot). Vehicles are not to be parked in areas designated for motorcycles.~~

8 VAC 105-10-360. [Repealed.]

§ 6.11. 8 VAC 105-10-370. Bicycles.

See Part XIII Part XIV, Bicycle Information (8 VAC 105-10-500 et seq.).

§ 6.12. 8 VAC 105-10-380. Responsibility.

Note: All parking violations are the responsibility of the person who purchased the permit or the person to whom a vehicle is registered with the DMV. Violations that are issued to a member of the immediate family of a faculty/staff member or student are assumed to have been committed by the faculty/staff member or student.

~~PART VII.~~ PART VIII. PARKING RESTRICTIONS.

§ 7.1. 8 VAC 105-10-390. Football and basketball parking restrictions.

Parking in the Coliseum Lot and along Spring and Stadium Roads is strictly forbidden at the following times:

1. After 5:15 p.m. on the day before a home varsity football game or weekend home varsity basketball game until the game has started.
2. After 5:15 p.m. on the day of a weekday home varsity men's basketball game until the game has started.
3. The Lane Stadium lot is also restricted from parking after 11 p.m. the night before all home football games until the game has started.
4. *Parking in the lots mentioned above is restricted during any other special event when prior notice is given by the posting of signs the morning of the event. Failure to comply with these restrictions will result in the vehicle being ticketed and/or towed at the owner's expense.*

§ 7.2. 8 VAC 105-10-400. Special Purpose and Graduate Housing parking.

A. Parking at the Special Purpose Housing complex is limited and only available to residents with special permits. Residents of the Special Purpose Housing complex are required to register their vehicles with the Parking Services Office as well. Visitors who wish to park in these areas should:

1. Park in the gravel parking lot adjacent to the Duck Pond on Oak Lane.
2. Ride the "Heathwood" BT bus from campus and get off at the Special Purpose Housing stop at the Anaerobe Lab on Prices Fork Road. Parking is available in the Commuter "B" lot adjacent to the bus stop on West Campus Drive (*except between 2 a.m. and 6 a.m.*).
3. Park in I Lot and ride the BT shuttle bus provided. Contact the Office of Residential and Dining Programs or the Blacksburg Transit Office for a schedule.

B. Special Purpose Housing parking is not permitted at the Anaerobe Lab on Prices Fork Road at any time. Unauthorized vehicles in the lab parking lot may be towed at owner's expense.

C. All residents of Special Purpose Housing, Hillcrest Graduate Housing, and Main Campbell Graduate Housing qualify for commuter parking permits. Special passes to be used with their Virginia Tech commuter/graduate parking permits will be issued by area coordinators to designate

~~these residents.~~ to students designated by the Housing Office.

1. Residents of Special Purpose Housing are only allowed to park overnight in the Special Purpose Housing Lot. They must display both a student parking permit and the red Special Purpose Housing permit issued by the Housing Office.

2. Residents of Main Campbell and Hillcrest are only allowed to park overnight in the Litton Reaves/Wallace Lot (C-Lot). They must display both a student parking permit and the white RGP permit issued by the Housing Office.

§ 7.3. 8 VAC 105-10-410. Golf Course, Duck Pond, Tennis, and Rec Field Parking.

Individuals may park in the specially designated parking areas at the Golf Course and Tennis Pavilion only while registered to engage in either activity, and at the Duck Pond only while present there. In addition to the above restriction, a Virginia Tech parking permit is required to park in these areas. Duck Pond parking is limited to two hours. Parking for participants at the Tennis Pavilion and, Rec Field, and Field House is available in the General (Resident) Parking Lot below Lane Stadium. *Parking behind the Field House is only permitted for handicap parking and service vehicles 24 hours a day, seven days a week. Handicap and Service Vehicle passes are required to park there.*

~~PART VIII.~~ PART IX. ESCORT SERVICE.

§ 8.1. 8 VAC 105-10-420. Escort Service.

The University Police Department provides a dusk-to-dawn service for individuals who need to walk at night from their dorm or office to their vehicle. Please call (540) 231-SAFE (231-7233) for details.

~~PART IX.~~ PART X. PARKING VIOLATIONS.

§ 9.1. 8 VAC 105-10-430. Fines and violations.

A. Fines for parking violations are as follows:

1. Most parking and bicycle violations are \$10 each.
2. Unauthorized parking in a designated handicap space is a \$50 violation.
3. Unauthorized or fraudulent use of a Virginia Tech parking permit is a \$100 violation.

B. Parking fines not received at the Office of the University Bursar within 10 days from the date of ticket citation issuance, or postmarked within seven days of issuance shall result in an additional \$10 late fee unless the ticket citation is under appeal. Payments sent through campus mail must be received by the 10th day of ticket citation issuance. Lost, stolen, or misplaced tickets citations do not excuse the late fee.

All student accounts with citations 30 days past due will be blocked regardless of amount. All accounts that are over

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\$100 will be blocked immediately. Accounts must be paid in full for block to be removed.

C. Fines may be handled as a payroll deduction or Commonwealth of Virginia tax offset, or applied against other existing accounts with the university, as an offset against Commonwealth of Virginia Vendor Debt Setoff Program or assessed against any other moneys due from the university, or both. Nonpayment of fines may result in blocked class registration and/or withheld grade transcripts. Outstanding fines may also be given to a collection agency. Accounts sent to collections will be assessed an additional collection cost.

D. All parking fines will be assessed against either the person who purchased the parking permit or the registered DMV owner of the vehicle.

§ 9.2. 8 VAC 105-10-440. Payment of parking fines.

A. Parking fines may be paid by:

1. Paying in person at Burruss Hall:

a. If the ticket citation is less than 10 days old, pay at Burruss Hall, second floor, window 8.

b. If the ticket citation is over 10 days old, go to 227 Burruss, pick up a remittance form, and pay at window 6 or 7, go to Burruss Hall, second floor, pick up a remittance form and pay at window 4 or 5. If you already have a remittance form, you can go directly to window 6 or 7 4 or 5.

2. Mailing ticket citation and payment through U.S. mail. Payment envelope must be postmarked no later than seven days from the date of ticket citation issuance to avoid a late fee. Mail to:

Office of the University Bursar
233 Burruss Hall
Virginia Tech
Blacksburg, VA 24061-0143

3. Mailing ticket and payment through campus mail to the Office of the University Bursar, campus mail code 0143. Payment must be received by the 10th day of ticket issuance to avoid a late fee.

4. 3. Depositing the ticket citation and payment in the lock box outside the Visitor Information Center on Southgate Drive. Payment must be received by the 10th day of ticket citation issuance to avoid a late fee.

4. Mailing citation and payment through campus mail to the Office of the University Bursar, campus mail code 0143. Payment must be received by the 10th day of citation issuance to avoid a late fee.

B. Checks should be made payable to: Treasurer, Virginia Tech.

C. Do not send cash through the mail or deposit cash in lock box.

PART X. PART XI.
IMMOBILIZATION POLICY (TOWING).

§ 10.1. 8 VAC 105-10-450. Vehicle towing.

A. Vehicles may be ticketed, immobilized and/or towed, or any combination of these at the owner's expense under the following circumstances:

1. For vehicles displaying lost, stolen, or fraudulent Virginia Tech parking permits, the campus police will be notified and the vehicle immobilized or towed. The vehicle will also be ticketed for unauthorized use of permit.

2. When a vehicle is illegally parked in a handicap zone or fire lane (such towing is required by state law).

3. When a vehicle is illegally parked, restricting traffic, or creating a traffic hazard.

4. When three or more unpaid tickets citations have accumulated.

5. When vehicles are parked on designated snow routes. Most streets and roads on campus are considered snow routes.

6. When vehicles are parked in violation of football and basketball game restrictions.

7. If notified by the Parking Services Office or the University Police Department to move a vehicle, and the owner or user does not accomplish this move within the specified time.

B. If the tow truck is called and the vehicle owner arrives on the scene to move the vehicle, the tow order may be cancelled canceled.

C. If the tow truck is already en route, the person responsible for the vehicle may still be required to pay towing costs before being permitted to move the vehicle. A ticket citation for illegal parking will also be issued.

D. The Parking Services Office and University Police Department are not responsible for damage resulting from towing or immobilization of vehicles.

§ 10.2. 8 VAC 105-10-460. Vehicle recovery.

If a vehicle is towed, the owner or person responsible must report to the University Police Department to arrange to recover the vehicle. Any fines and towing costs must be paid before the towing company will release the car.

§ 10.3. 8 VAC 105-10-470. Abandoned vehicles.

Abandoned cars will be disposed of in accordance with Virginia state law. Any vehicle that does not have current license plates or has not moved in 72 hours, or both, will be presumed to be abandoned.

PART XI. PART XII.
MOVING VIOLATIONS.

§ 11.1. 8 VAC 105-10-480. Moving violations.

A. The University Police Department is charged with the enforcement of all state laws, including the Motor Vehicle

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Code of Virginia. Traffic citations for moving violations are referred to local courts. Campus speed limits are radar enforced.

B. The speed limit on campus is 25 MPH unless otherwise posted.

C. The speed limit around the Drillfield is 15 MPH.

D. Every person shall obey the instructions of any traffic control device, sign, or notice, unless otherwise directed by a traffic control officer.

E. All university police officers have the authority to enforce the laws of the Commonwealth and the university pertaining to the operation of motor vehicles on campus property.

PART XII. PART XIII. APPEALS.

§ 12-1. 8 VAC 105-10-490. Appealing a violation.

A. The appeals hearing officer for the university will review all written appeals involving nonmoving traffic violations. Traffic citations for moving violations are issued by the University Police Department on campus and referred to the local courts for a decision.

B. Tickets Citations received for parking on a yellow line or curb, in roadways, handicap zone, or metered space will not be viewed favorably in the appeals process except in genuine emergency situations as determined by the appeals hearing officer.

C. If a person wishes to appeal a parking or bicycle ticket citation, the procedure below should be followed:

1. All appeals must be filed within 10 calendar days of issuance of the ticket citation. All rights to appeal a ticket citation are waived after this 10-day period.
2. The appeal must be written on an official appeals form available in the Parking Services Office. This is necessary to ensure the Parking Services Office has all the necessary information to process the appeal and satisfy audit procedures.
3. Please make sure the address and phone numbers you list are complete, accurate, and legible. The Parking Services Office cannot be responsible if you fail to receive your appeal notice under these circumstances. Remember to notify the Parking Services Office of any address changes.
4. The issue on appeal is whether or not the cited rule was violated. It is no defense to "not mean" to violate a rule, to "see others" violate it, to "not realize" it was violated, or to have "violated it in the past without penalty."
5. All appeals should be finalized by the last day of classes.
6. The decision of the appeals hearing officer is final.

PART XIII. PART XIV.

BICYCLE INFORMATION (REGISTRATION AND PARKING).

§ 13-1. 8 VAC 105-10-500. General.

All designated employees of the Parking Services Office and the University Police Department have the authority to enforce these rules and regulations.

§ 13-2. 8 VAC 105-10-510. Registration.

All bicycles and mopeds are to be registered with the Parking Services Office prior to parking on campus. ~~Registration for bicycles and mopeds is provided as a courtesy at no charge. Registration is yearly unless the bicycle is already registered with a permit that expires August 15, 1997.~~ However, the user of a non-registered bicycle on campus will be subject to a \$10 fine and impoundment or immobilization of the bicycle or moped. Impounded or immobilized bicycles may be retrieved after the owner presents proof of ownership to the Parking Services Office.

§ 13-3. 8 VAC 105-10-520. Parking enforcement.

A. Bicycles may be parked only at bicycle racks, except when permission has been granted to keep a bicycle inside a campus building. (Housing must approve keeping a bike in a dormitory room. A department head must grant permission to keep a bike in a faculty office.)

B. Mopeds may be parked only at bicycle parking racks.

C. No person is allowed to park a bicycle or moped as follows:

1. On a sidewalk, at a tree or post, on a lawn, next to a building, in a roadway, at a utility pole, light post, banister, parking meter, or other available structure. Always use a bicycle rack.
2. So that it blocks or obstructs any entrance, exit, ramp or breezeway.
3. In any campus building (except as permitted in dormitory rooms and faculty offices).
4. In a parking area designated for motor vehicles.
5. In other than an upright position.

D. Bicycles or mopeds found parked and/or locked in areas other than those allowed may be impounded or immobilized by the Parking Services Office or the University Police Department. The person responsible for the bike will receive a bicycle parking ticket citation.

E. Motorcycles may not be parked in bicycle racks. Students' motorcycles are to be parked in designated student motorcycle areas.

§ 13-4. 8 VAC 105-10-530. Operation enforcement.

A. Bicycles are useful means of transportation when used properly. By taking a few precautions, bicycling can be a safe, enjoyable and theft-free experience.

B. Every person operating a bicycle on university property is to comply with all traffic control devices, applicable Virginia state statutes regarding bicycle operation, and these regulations.

Proposed Regulations

C. Persons riding bicycles on campus are to practice courteous, defensive riding. They will consider pedestrians and conditions that require traveling at safe speeds. At all times, they are to be in proper control over their bicycles.

D. Please remember the following:

1. Persons may not operate a bicycle on any campus sidewalk, lawn, or designated pedestrian plaza, such as the Library Plaza, Cowgill Plaza, etc.
2. It is illegal to ride in the wrong direction on a one-way street or against the regular flow of vehicular traffic, including the Drillfield.
3. Persons operating a bicycle will yield to pedestrians in situations of conflicting bicycle/pedestrian traffic.
4. Ride single file, with traffic, and to the right of the roadway.
5. Use bike paths when available.
6. Use proper turn signals.
7. Keep bicycle in proper mechanical condition.
8. Watch for people exiting parked vehicles.
9. Watch for the unexpected from motorists. (The number-one statement of vehicle operators involved in accidents with cyclists is, "I didn't see him!")
10. Virginia law requires a rear reflector and a headlight when riding at night.
11. In crosswalks, always walk; you are considered a pedestrian.
12. If involved in an accident, report it to the University Police Department immediately.

E. Moving violations will result in a traffic citation being issued by the University Police Department. Repeated violations may result in suspension or revocation of bicycle operation privileges on campus.

§ 13-5. 8 VAC 105-10-540. Theft prevention.

Bicycles are an easy target for theft. Some helpful hints are as follows:

1. Use bike racks, and secure bikes with bar-type locks.
2. Secure frame and front wheel.
3. Chain fences and chain-type locks can be quickly and easily cut.
4. Check bicycle frequently so it doesn't appear abandoned.
5. Park in high visibility areas.
6. Personalize your bicycle to make it easy to recognize.
7. Engrave your bike in several locations.
8. Register your bicycle. If it is stolen and then located, you can be easily found and ownership readily determined.

9. Write down the make, model, and serial number of your equipment. Keep this information in a safe place with the receipt of purchase.

10. Have your bicycle insured.

If your bicycle is stolen on campus, report the theft to the University Police Department.

§ 13-6. 8 VAC 105-10-550. Abandoned bicycles.

Bicycles left on the university grounds more than five days following graduation will be considered abandoned. These bikes will be impounded and disposed of in accordance with university policy regarding such property.

~~PART XIV.~~ PART XV.

AVOIDING PARKING TICKETS CITATIONS AND TOWING CHARGES.

§ 14-4. 8 VAC 105-10-570. How to avoid parking tickets citations and towing charges.

A. Properly display a Virginia Tech parking permit from 7 a.m. to 5 p.m. Monday through Friday. Remember that the parking rules and regulations are in effect whenever the university is open for business, including when classes are not in session and during semester breaks.

B. Park in a clearly identified parking space appropriate for your permit.

C. Do not loan your permit to others. Shared permits may result in a \$100 "Unauthorized Use of Permit" ticket citation assessed against the permit owner.

D. Have visiting family and friends obtain a visitor parking permit before parking on campus.

E. Observe special parking restrictions such as:

1. Parking lots at the Owens Dining Hall, and Dietrick Dining Hall and the ~~Donaldson Brown Continuing Education Center (CEC)~~ are restricted to faculty and staff parking only, are reserved for faculty and staff members from 6 a.m. to 4 p.m., seven days a week. The right side of the Donaldson Brown Hotel and Conference Center (DBH) is reserved for visitors (nonstudents or nonfaculty/staff) 24 hours a day, seven days a week. The Bookstore Lot parking meters are enforced from 7 a.m. to 7 p.m., seven days a week.

2. All dining hall loading docks prohibit parking at all times.

3. Parking is prohibited in the Coliseum Lot and along Stadium and Spring Roads after 5:15 p.m. on the day before a home varsity football game or weekend home varsity basketball game, or after 5:15 p.m. on the day of a weekday home varsity men's basketball game until the game has started.

4. Parking is prohibited in the parking lot below Lane Stadium from 11 p.m. the night before any home football games until the game has started.

5. Other special restrictions, as posted.

~~§ 14.2. Avoiding late fees. 8 VAC 105-10-580. Ticketed anyway?~~

Avoid a \$10 late fee per ticket *citation* by making sure payment is made to the Office of the University Bursar in Burruss Hall within 10 calendar days of ticket *citation* issuance; if payment is mailed, the payment envelope must be postmarked within seven days of ticket *citation* issuance. Payments sent through campus mail must be received by the 10th day of ticket *citation* issuance. Do not send cash through the mail or deposit cash in the payment box at the Visitor Information Center. Checks should be made payable to Treasurer, Virginia Tech.

PART XVI.
FEES.

8 VAC 105-10-590. Faculty/staff permits.

The following fees apply for faculty/staff permits:

- | | |
|--------------|------|
| 1. Full-Year | \$50 |
| 2. Semester | \$25 |
| 3. Summer | \$12 |
| 4. Daily | \$ 1 |

8 VAC 105-10-600. Student permits.

The following fees apply for student permits.

- | | |
|--------------|------|
| 1. Full-year | \$40 |
| 2. Semester | \$23 |
| 3. Summer | \$10 |
| 4. Daily | \$ 1 |

8 VAC 105-10-610. Citation fines.

The following fees apply for citations.

- | | |
|------------------------------------|-------|
| 1. Expired Meter | \$10 |
| 2. Parking in an Unauthorized Area | \$10 |
| 3. Parking on Yellow Line or Curb | \$10 |
| 4. Parking in a No Parking Zone | \$10 |
| 5. Parking in a Roadway | \$10 |
| 6. Other | \$10 |
| 7. Overtime Parking | \$10 |
| 8. Parking in a Handicap Zone | \$50 |
| 9. Unauthorized Use of Permit | \$100 |
| 10. Bicycle | \$10 |

V.A.R. Doc. No. R96-124; Filed November 28, 1995, 12:05 p.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 regulation.

DEPARTMENT OF CONSERVATION AND RECREATION

Title of Regulation: [~~VR 247-03-00, 4 VAC 5-15-10 et seq.~~]
Nutrient Management Training and Certification Regulations.

Statutory Authority: § 10.1-104.2 of the Code of Virginia.

Effective Date: January 24, 1996.

Summary:

The Nutrient Management Training and Certification Regulations govern a voluntary program for training and certifying persons preparing nutrient management plans. The plans are prepared to manage land application of fertilizers, sewage sludge, manure, and other nutrient sources for agronomic benefits and in ways which protect water quality. The regulations provide for certification standards, revocation or suspension of certificates, criteria for the development of nutrient management plans, and program fees. The Department of Conservation and Recreation will administer this program as part of the nutrient management program.

The development of a voluntary nutrient management training and certification program was authorized by the 1994 Session of the General Assembly. The program should expand the number of persons in the private and public sector capable of developing nutrient management plans beyond that of the limited number of agency personnel currently involved. Nutrient management is a key strategy to assist in efforts to reduce nitrogen and phosphorus levels in the Chesapeake Bay necessary to protect ecological and economic interests dependent on the Chesapeake Bay. The program should assist the Commonwealth in achieving a 40% reduction in controllable nutrient loads entering the Chesapeake Bay tributaries consistent with the Chesapeake Bay Agreement of 1983 as amended in 1987 and 1992. The program should also protect groundwater and surface waters in the Commonwealth while retaining the agronomic benefits of efficient nutrient use on farm crops and other lands.

In addition to changes in some definitions, substantial changes to the proposed regulation in response to public comment include the following:

1. Changes required soil analysis records for each field to representative soil analysis results for fields. (4 VAC 5-15-100 B 2 a)
2. Reduces recordkeeping requirements for yield records for each field if the planner makes adjustments to Virginia Tech research based yields. Allows planners to make upward adjustments up to 20% of fields covered

by a plan without maintaining such records. (4 VAC 5-15-100 B 2 c)

3. Requires planners to maintain on site a summary listing of plans developed so that the department can randomly inspect plans. (4 VAC 5-15-100 B 3)

4. Changes the maximum life of a nutrient management plan from three years to five years. (4 VAC 5-15-140 F 7 a)

5. Amends procedures to make it easier for the planner to make reasonable adjustments to Virginia Tech research based yields. Allows planners to make upward adjustments to up to 20% of fields covered by a plan without maintaining such records. (4 VAC 5-15-150 A 2 e)

6. Changes "soil analysis results" to "representative soil analysis results." (4 VAC 5-15-150 A 2 f)

7. Changes plan life from "one to three years" to "one to five years." (4 VAC 5-15-150 D 1)

8. Deletes the recommendation that a certified planner notify the farmer if the nutrient management plan may be required by a Virginia regulatory program. (4 VAC 5-15-150 D 7)

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 E. J. Fanning, Regulatory Coordinator, Department of Conservation and Recreation, 203 Governor Street, Suite 206, Richmond, VA 23219.

4 VAC 5-15-10 et seq. Nutrient Management Training and Certification Regulations.

[CHAPTER 15. NUTRIENT MANAGEMENT TRAINING AND CERTIFICATION REGULATIONS.]

[§-4. 4 VAC 5-15-10.] Definitions.

The words and terms used in [~~these regulations~~ this chapter] shall have the following meanings [—] unless the context clearly indicates otherwise.

"Application rate" or "nutrient rate" means the quantity of major nutrients, nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O on a per acre basis to supply crop or plant nutrient needs, and to achieve realistic expected crop yields.

"Banding" or "sideband" means the placement of fertilizer approximately two inches to the side and two inches below the seed.

"Best management practice" means a conservation or pollution control practice that manages soil, nutrient losses, or other potential pollutant sources to minimize pollution of water resources, such as split applications of nitrogen, or use of cereal grain cover crops to trap available nitrogen and reduce soil erosion.

"Biosolids" means a sewage sludge that has received an established treatment for required pathogen control and is treated or managed to reduce vector attraction to a satisfactory level and contains acceptable levels of pollutants, such that it is acceptable for use for land application, marketing, or distribution in accordance with [VR 355-17-200 12 VAC 5-585-10 et seq.], Biosolids Use Regulations of the Board of Health.

"Broadcast" means the uniform application of a material over a field.

"Calibration" means the systematic determination of the operational parameters, such as speed and quantity delivered, of application equipment.

"Certified nutrient management planner" or "nutrient management planner" or "planner" means the person or persons who prepare nutrient management plans under these regulations.

"Cool season grass" means grass species of temperate zone origin which exhibit the greatest rates of dry matter production in the day/night temperature range of 60°/50°F to 80°/70°F and includes fescues, bluegrasses, and ryegrasses.

"Commonwealth" means the Commonwealth of Virginia.

"Cover crop" means a crop including, but not limited to, cereal grains, which is planted following the harvest of the preceding crop for the purpose of:

1. Seasonal protection of soil, or
2. Assimilation of residual nitrogen left from a previous crop or from continued mineralization of nitrogen.

"Crop" means cultivated plants or agricultural produce such as grain, silage, forages, oilseeds, vegetables, fruit, nursery stock, or turfgrass.

"Cropland" means land used for the production of grain, oilseeds, silage, industrial crops, and any other category of crop not defined as specialty crop, hay, or pasture.

"Crop nutrient needs" means the primary nutrient requirements of a crop determined as pounds of nitrogen as N, phosphorus as P_2O_5 , and potassium as K_2O required for production of an expected crop yield based upon soil analysis results.

"Crop nutrient removal" means the amount of nutrients per acre expected to be taken up by a plant and removed from the site in the harvested portion at the expected yield level, generally expressed as tons per acre or bushels per acre.

"Crop rotation" means a method of maintaining and renewing the fertility of a soil by the successive planting of different crops on the same land.

"Department" means the Department of Conservation and Recreation.

"Double crop" means the production and harvesting of two crops in succession within a consecutive 12-month growing season.

"Dry manure" or "semisolid manure" means manure containing less than 85.5% moisture.

"Environmentally sensitive site" means any field which is particularly susceptible to nutrient loss to groundwater or surface water since it contains, or drains to areas which contain, any of the following features:

1. Soils with a leaching index above 10;
2. Sinkholes;
3. Shallow soils less than 41 inches deep likely to be located over fractured or limestone bedrock;
4. Subsurface tile drains;
5. Floodplains as identified by soils prone to frequent flooding in county soil surveys; or
6. Lands with slopes greater than 15%.

"Expected crop yield" means a realistic crop yield for a given farm field determined by using yield records [and or] soil productivity information.

"Fertilizer" means any organic or inorganic material of natural or synthetic origin which is added to a soil to supply certain nutrients essential to plant growth.

"Field" means a unit of contiguous nonwooded land generally used for crop production that is separated by permanent boundaries, such as fences, permanent waterways, woodlands, croplines not subject to change because of farming practices, and other similar features or as determined by the United States Department of Agriculture [Consolidated] Farm Service Agency.

"Field identification number" means a number used by a farmer (or the United States Department of Agriculture [Consolidated] Farm Service Agency) to distinguish or identify the location of a field on a farm.

"Groundwater" means any water beneath the land surface in a water saturated layer of soil or rock.

"Grid soil sampling" means a process whereby farm fields or other areas are subdivided into smaller areas or squares for the purpose of obtaining more detailed soil analysis results.

"Hay" means a grass, legume, or other plants, such as clover or alfalfa, which is cut and dried for feed, bedding, or mulch.

"Hydrologic soil group" means a classification of soils into one of four groups, A, B, C, or D, according to their hydrologic properties, ranging from low runoff potential (high infiltration potential) in group A to high runoff potential (low infiltration potential) in group D.

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"Incorporation" means the process whereby materials are mixed into soils and not exposed on the soil surface, such as would be achieved by disking one time to a depth of six inches.

"Industrial waste" means liquid or other waste resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

"Irrigation" means the application of water to land to assist in crop growth.

"Irrigation scheduling" means the time and amount of irrigation water to be applied to an area for optimum crop growth and to minimize leaching and runoff.

"Leaching" means the movement of soluble material, such as nitrate, in solution through the soil profile by means of percolation.

"Legume" means a plant capable of fixing nitrogen from the atmosphere such as peas, beans, peanuts, clovers, and alfalfas.

"Legume nitrogen credit" means the amount of nitrogen a legume is expected to supply to a succeeding crop.

"Liming" means the application of materials containing the carbonates, oxides, or hydroxides of calcium or magnesium in a condition and in a quantity suitable for neutralizing soil acidity.

"Liquid manure" means manure containing at least 85.5% moisture [or which can be applied through subsurface injection or surface application with liquid application equipment].

"Livestock" means domesticated animals such as cattle, chickens, turkeys, hogs, and horses raised for home use or for profit.

"Manure" or "animal waste" means animal fecal and urinary excretions and waste by products which may include spilled feed, bedding litter, soil, lactase, process wastewater, and runoff water from animal confinement areas.

"Mehlich I" means a specific soil analysis procedure developed by North Carolina State University to determine levels of certain nutrients in soils.

"Micronutrient" means a nutrient necessary only in extremely small amounts for plant growth.

"Mineralization" means the process when plant unavailable organic forms of nutrients are converted to a plant available inorganic state as a result of soil microbial decomposition.

"NRCS" means the United States Department of Agriculture, Natural Resource Conservation Service [~~formerly SCS~~], formerly the Soil Conservation Service (SCS)].

"Nutrient" means an element or compound essential as raw materials for plant growth and development such as carbon, nitrogen, and phosphorus.

"Nutrient content" means the percentage of any primary nutrients such as nitrogen as N, phosphorus as P₂O₅, and

potassium as K₂O contained in any type or source of plant nutrients.

"Nutrient management plan" or "plan" means a plan to manage the amount, placement, timing, and application of manure, fertilizer, biosolids, or other materials containing plant nutrients in order to reduce pollution and to produce crops.

"Nutrient Management Training and Certification Fund" means the fund established by § 10.1-104.2 of the Code of Virginia to support the department's Nutrient Management Training and Certification Program.

"Organic nutrient source" or "organic source" means manure, biosolids, sludge, green manure, compost, or other plant or animal residues which contain plant nutrients.

"Organic residuals" means nutrients released over time from manure, biosolids, industrial wastes, legumes, or other organic sources of nutrients.

"Pasture" means land which supports the grazing of animals for forages.

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

"Plant available nutrients" means the portion of nutrients contained in nutrient sources which is expected to be available for potential use by plants during the growing season or the crop rotation.

"Pre-sidedress nitrogen test (PSNT)" means a procedure used to help determine soil nitrogen level during a crop growing season.

"Primary nutrients" means nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O.

"Residual nutrients" means the level of nitrogen, phosphorus, and potassium remaining or available in the soil from previously applied nutrient sources, or unharvested plants or plant parts, or baseline nutrient levels in the soil.

"Runoff" means that part of precipitation, snow melt, or irrigation water that runs off the land into streams or other surface water which can carry pollutants from the land.

"Secondary nutrient" means calcium, magnesium, or sulfur.

"Sewage sludge" or "sludge" means any solid, semisolid, or liquid residues which contain materials removed from municipal or domestic wastewater during treatment including primary and secondary residues. Other residuals or solid wastes consisting of materials collected and removed by sewage treatment, septage, and portable toilet wastes are also included in this definition. Liquid sludge contains less than 15% dry residue by weight [or can be applied through subsurface injection or surface application with liquid application equipment]. Dewatered sludge contains 15% or more dry residue by weight.

"Shall" means a mandatory requirement.

"Should" means a recommendation.

"Slope" means the degree of deviation of a surface from horizontal, measured as a percentage, as a numerical ratio, or in degrees.

"Sidedress" means the placement of fertilizer beside or between the rows of a crop after crop emergence.

"Sinkhole" means a depression in the earth's surface caused by dissolving of underlying limestone, salt, or gypsum having drainage patterns through underground channels.

"Slowly available nitrogen" means nitrogen sources that have restricted availability involving compounds which dissolve slowly, materials that must be microbially decomposed, or soluble compounds coated with substances highly impermeable to water such as urea formaldehyde based water insoluble nitrogen, sulfur coated urea, natural organics.

"Soil erosion" or "erosion" means the wearing away of the land surface by water, wind, or waves.

"Soil management group" means a grouping of soils based on their similarity in profile characteristics which affect crop production and require specific soil and crop management practices.

"Soil nitrate leaching index" means the potential for a given soil to be subject to nitrate leaching below the root zone.

"Soil pH level" means the negative logarithm of the hydrogen-ion activity of a soil which measures the relative acidity or alkalinity of the soil. The pH level affects the availability and plant utilization of nutrients.

"Soil productivity group" means a grouping of soils based upon expected yield levels for a given crop type.

"Soil series" means a classification of a specific soil type by name based on the chemical and physical properties of the soil.

"Soil survey" means a published or unpublished document developed by a governmental entity which includes detailed descriptions and classifications of soils, mapping of various soil series, and the interpretation of soils according to their adaptability for various crops and trees.

"Specialty crop" means vegetables, tree crops, perennial vine crops, ornamentals, horticultural crops, and other similar crops.

"Split application" means utilizing a sequence of two or more nutrient applications, separated by approximately three weeks or more, to a single crop in order to improve nutrient uptake efficiency.

"Surface water" means all water whose surface is exposed to the atmosphere.

"Tillering" is the formation of lateral shoots from the axillary buds of small grains and grasses.

"Tissue test" means an analysis of crop tissue for the percentage of nitrogen at key growth stages, and used as an intensive nutrient management technique with small grain crops.

"Topdress" means broadcast applications of fertilizer on crops such as small grains or forage after crop emergence has occurred.

"Turfgrass" means selected grass species planted or sodded and managed for such uses as home lawns, golf courses, office parks and rights-of-way.

"Volatilization" means a process by which nitrogen is lost to the atmosphere as ammonia gas.

"Warm season grass" means a grass species of tropical origin that exhibits the highest rate of dry matter production in the day/night temperature range of 90°/79°F at a minimum to a maximum of 97°/88°F. Warm season grasses include zoysia and bermuda grasses.

"Water insoluble nitrogen" or "WIN" means a urea formaldehyde based slowly available nitrogen listed on fertilizer bags and reported as a percentage.

"Watershed" means a drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation.

"Watershed code" means the letter and number used by the department to identify a watershed or hydrologic unit area.

"Zadoks' growth stage" means the numerical scale ranging from 0-93 which assigns values to small grain growth stages, e.g. Growth Stage 30 is just prior to the stem elongation phase in wheat growth.

[~~§-2~~ 4 VAC 5-15-20.] Purpose.

A. [~~These regulations govern~~ This chapter governs] the department's voluntary Nutrient Management Training and Certification Program for individuals who prepare nutrient management plans.

B. A nutrient management plan is prepared to indicate how primary nutrients are to be managed on farm fields and other land for crop production and in ways which protect groundwater and surface water from excessive nutrient enrichment. Plans contain operating procedures based on expected crop yield, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental resource protection, and agronomic practices such as liming, tillage, and crop rotation. The department shall certify the competence of individuals to prepare these plans and provide criteria relating to the development of nutrient management plans.

[~~§-3~~ 4 VAC 5-15-30.] Certificates of competence.

A. [~~These regulations apply~~ This chapter applies] to any individual seeking a certificate of competence as described in § 10.1-104.2 of the Code of Virginia.

B. Certificates of competence shall be issued by the department to certified nutrient management planners. The department may issue distinct classifications of certification based on areas of specialty, including agriculture and urban agronomic practices.

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[§-4. 4 VAC 5-15-40.] Eligibility requirements.

A. Certification may be obtained by satisfying all of the following requirements for certification:

1. Satisfactorily completing and submitting to the department an application in the form required by the department, including a statement of any felony convictions. Such application shall be submitted to the department at least 30 days before the approved examination date set by the department. The application shall request information relating to the person's education, work experience, knowledge of nutrient management, and willingness to abide by the requirements of these regulations;
2. Supplying proof of meeting one of the following:
 - a. A copy of a college transcript indicating completion of a college degree with a major in an agriculturally related area, and one year of practical experience related to nutrient management planning acceptable to the department, or
 - b. A combination of education to include nutrient management related educational courses or training and a minimum of three years of practical experience related to nutrient management acceptable to the department;
3. Obtaining a passing score on each of the essential components of the nutrient management certification examination administered by the department; and
4. Submitting a \$100 certification fee by check or money order to the department.

B. Certificates shall be valid for two years and will expire on the last day of the expiration month. Certified nutrient management planners or applicants shall notify the department of any change in mailing address within 30 days of such change in address.

C. Individuals certified as nutrient management consultants by the State of Maryland or certified as nutrient management specialists by the Commonwealth of Pennsylvania will be eligible for certification in Virginia by complying with all requirements of these regulations except for subdivision A 2 of this section. These individuals may also substitute, for the requirements in [§-6 4 VAC 5-15-60] C, the attainment of a passing score on a Virginia specific examination component which shall include at a minimum the elements listed in [§-6 4 VAC 5-15-60] C 9 and C 10. The department, upon review, may accept or approve nutrient management certification programs of other states as satisfying partial requirements for certification.

[§-5. 4 VAC 5-15-50.] Fees.

A. Fees shall be collected for certification and recertification to defray the administrative cost for the certification program.

B. A fee may be charged to supply training materials and present education and training programs, including continuing education, which support the certification program.

C. Fees are nonrefundable and shall not be prorated.

D. The certification fee of \$100 for the initial certification period shall be due with the application for certification. If the applicant is unsuccessful in achieving a passing score on the examination, the applicant may retake the examination at the next scheduled time. Applicants may retake the examination one time with no additional charge by resubmitting the application for certification.

[F. E.] All fees collected by the department shall be deposited in the state treasury Nutrient Management Training and Certification Fund and shall be used exclusively for the operation of the Nutrient Management Training and Certification Program.

[§-6. 4 VAC 5-15-60.] Examination.

A. The department shall administer nutrient management certification examinations at least once per year. The examinations shall require a demonstration of the ability to prepare a nutrient management plan. The department may limit the number of applicants taking the examination based upon available examination space.

B. Applicants for certification shall achieve a passing score on each of the essential components of the nutrient management certification examination to become eligible for certification.

C. The examinations for persons involved in agricultural nutrient management shall address the elements listed below. To address nutrient management on [~~certain other~~ urban] land uses [~~for example residential lawns, office parks, and golf courses,~~] specialty specific examinations may be added to or substituted by the department for the elements below.

1. General understanding of overall nutrient management concepts such as nutrient cycling on farms, the purpose of nutrient management planning, economic aspects of nutrient use, and components of a nutrient management plan;
2. Basic soil science concepts such as soil physical and chemical properties including texture, structure, organic matter, and horizon development, and how such characteristics influence crop productivity and adaptation, water runoff, and infiltration;
3. Environmental management concepts such as the water cycle, nutrient loss mechanisms, environmental effects of nutrients in waters including Chesapeake Bay, identification of high risk sites relating to nutrient use and appropriate nutrient management practices to reduce nutrient losses;
4. Nutrient sampling, testing, and analysis such as basic sampling procedures, relationship of soil test level with likelihood of crop response, soil nitrate testing, manure and biosolids sampling and interpretation, and determining nitrogen supplied by legumes;
5. Basic soil fertility concepts such as relationship of soil pH to nutrient availability and toxicity, essential elements for crop growth, limiting factors to crop production, cation

exchange capacity and related concepts, nutrient cycles, and forms of nutrients in soils;

6. Fertilizer management concepts such as types of fertilizers, nutrient analysis of common materials and grades, basic calculations and blending, calibration of equipment, and application methods;

7. Manure management concepts such as nutrient content and volume produced, determination of plant available nutrients, selecting sites for manure application, proper timing and placement, coordination of fertilizers with manure, application methods and calibration;

8. Biosolids management concepts such as determination of plant available nutrients, nutrient content, forms of nutrients, types of sludges, coordination with fertilizer applications, and application methods;

9. Nutrient management training and certification regulatory requirements, and requirements of other nutrient management related laws, regulations, and incentive programs; and

10. Development of multiple components of nutrient management plans and completion of calculations comparable to development of nutrient management plans such as, but not limited to, determination of specific soil types in fields, determination of specific nutrient requirements based on soil productivity and soil analysis results, evaluation of field limitations based on environmental hazards or concerns, and interpretation of manure analysis results.

D. An individual who is unable to take an examination at the scheduled time shall notify the department at least five days prior to the date and time of the examination; such individual will be rescheduled for the next examination. The department may consider accepting notice of less than five days due to individual hardship situations on a case-by-case basis. Failure to notify the department may require the individual to submit a new application and payment of fees in accordance with [§ 4. 4 VAC 5-15-40.]

E. The department shall establish acceptable passing scores for the examinations based on the department's determination of the level of examination performance required to show minimal acceptable competence.

F. All applicants shall be notified of results in writing within 60 days of the completion of the examinations.

[§ 7. 4 VAC 5-15-70.] Training.

A. The department shall provide a training session on the mechanics of nutrient management plan development prior to scheduled examinations.

B. The department may provide a training course on concepts supporting and relating to nutrient management which may include: basic soil science; soil fertility; environmental management; fertilizer, manure, and biosolids management; and other relevant topics.

[§ 8. 4 VAC 5-15-80.] Certificate renewal.

The department will not renew a certificate if a proceeding to deny certification under [§ 44 4 VAC 5-15-110] has begun, or if the department has found that the applicant violated any requirements of [these regulations this chapter] . A certificate is issued for two years and may be renewed on or before the expiration of a certificate by complying with all of the following requirements:

1. Submittal of a renewal application on the form the department requires;

2. Payment of a \$100 renewal fee to the department;

3. Submittal of proof of satisfactory completion of at least four hours of continuing education pre-approved by the department within the past two years. Requests for pre-approval of continuing education courses must be received at least 60 days prior to the expected course date or dates and must include a detailed syllabus indicating time to be spent on each topic area covered. Continuing education hours must be in subject matter consistent with [§ 6 4 VAC 5-15-60] C. Department personnel may attend continuing education sessions to verify that the requirements are met. Proof of attendance must be verified by the course provider. The department may accept continuing education units obtained in Maryland and Pennsylvania if such continuing education units are specifically for the purpose of recertification in the state nutrient management certification program; and

4. Completion of at least one nutrient management plan or completion of four hours of continuing education pre-approved by the department within the past two years in addition to the requirements of subdivision 3 of this section.

[§ 9. 4 VAC 5-15-90.] Expiration of a certificate.

A. A certificate shall be deemed expired the day after the expiration date on the certificate if any of the requirements of [§ 8 4 VAC 5-15-80] are not met.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements of [§ 4 4 VAC 5-15-40] A including the examination requirements.

[§ 10. 4 VAC 5-15-100.] Recordkeeping and reporting requirements.

A. Certified nutrient management planner reporting requirements. A person who holds a certificate under these regulations shall keep records and file with the department by September 30 of each year an annual activity report on a form supplied by the department covering the previous year (July 1 through June 30). The annual activity report shall contain the following information:

1. Name and certificate number of the certified nutrient management planner;

2. Any change of mailing address during the previous year;

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3. Number of nutrient management plans completed;
4. Acreage covered by plans and planned acreage by county and state watershed codes;
5. Breakdown of planned acreage by cropland, hay, pasture, and specialty crops by county and watershed code; and
6. Other information indicating number of practices facilitated by the planner such as manure testing and use of the PSNT.

B. Certified nutrient management planner recordkeeping requirements. The department may periodically inspect nutrient management plans prepared by certified persons and required records for the purpose of review for compliance with [~~§§ 14 and 15~~ 4 VAC 5-15-140 and 4 VAC 5-15-150]. A certified nutrient management planner shall maintain the following plan records for a period of not less than three years from the date the plan was prepared:

1. A complete copy of each nutrient management plan prepared and shall make such plans available for inspection by department personnel upon request within two weeks of receiving such request;
2. Records for each plan with all of the following information if the information is not already contained in the plan:
 - a. [~~Soil analysis for each field, or field grid~~ Representative soil analysis results for fields, or field grids] if grid soil sampling is used, dated not more than three years prior to the date the nutrient management plan was completed to include information on soil fertility levels for phosphorus and potassium, and pH level;
 - b. Copies of soil survey maps or a soil survey book containing maps for each field unless a soil survey has not been published for the county;
 - c. Yield records for each field [and to include] calculations used to determine the planning yield if [~~different from soil productivity based yields~~ upward adjustments to soil productivity based yields were made to more than 20% of the fields covered by the plan];
 - d. Type and number of livestock, if any, as well as a description of the livestock to include average weight;
 - e. Calculations or records indicating annual quantity of manure produced or expected to be produced; and
 - f. Organic nutrient source analysis, if applicable, to include information on percentage of moisture, total nitrogen or total Kjeldahl nitrogen, total phosphorus, and total potassium.

[3. A summary listing of all plans prepared to include landowner or operator's name and the date the plan was prepared or revised.]

[~~§ 44.~~ 4 VAC 5-15-110.] Compliance with regulations and disciplinary action.

If the department finds that a certified person or an applicant for certification violated any requirements of [~~these regulations this chapter~~], including the circumstances listed below, the department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Virginia Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

1. Providing misleading, false, or fraudulent information in applying for a certificate;
2. Providing the department with any misleading, false, or fraudulent report;
3. Offering or preparing a nutrient management plan claimed to be prepared by a person certified as a nutrient management planner in Virginia as provided by these regulations without a certificate;
4. Offering or preparing a nutrient management plan that does not comply with the requirements of these regulations;
5. Failing to promptly provide any report or to allow the department access to inspect any records required to be kept by these regulations;
6. Conviction of a felony related in any way to the responsibilities of a certified nutrient management planner.

[~~§ 12.~~ 4 VAC 5-15-120.] Advisory committee.

The department may establish a nutrient management training and certification advisory committee. Advisors shall serve for a term of two years. Members shall be from the agricultural community, academia, industry, the environmental community, and appropriate government units.

[~~§ 13.~~ 4 VAC 5-15-130.] Duties of other state agencies.

The provisions of [~~these regulations this chapter~~] shall not limit the powers and duties of other state agencies.

[~~§ 14.~~ 4 VAC 5-15-140.] Nutrient management plan content.

A. A certified nutrient management planner shall prepare nutrient management plans which contain the information in subsections B through G of this section. For nutrient management plans covering nonagricultural, specialty land uses, for example residential lawns, office parks, and golf courses, the department may specify additional plan elements which are critical to the management of nutrients for a particular activity, and may eliminate requirements not pertinent to nonagricultural land uses.

B. Plan identification. Each plan shall be identified by a single cover sheet indicating:

1. Farmer/operator name and address;
2. Name and certificate number of certified nutrient management planner;
3. County and watershed code of land under the nutrient management plan;

4. Total acreage under the plan with double cropped acreage accounted for only once;
5. Acreage of cropland, hay, pasture, and specialty crops included in the plan for the first year of the plan;
6. Date the plan was prepared or revised; and
7. Type and approximate number of livestock, if applicable.

C. Map or aerial photograph.

1. Each plan shall contain a map or aerial photograph to identify:
 - a. The farm location and boundaries;
 - b. Individual field boundaries; and
 - c. Field numbers and acreages.
2. The map or aerial photograph shall be legible, with the features in subdivision 1 of this subsection recognizable. A farm sketch or soil survey map may be used when a map or aerial photograph is not available, if the features described in subdivision 1 of this subsection are recognizable.

D. Summary of nutrient management plan recommendations. Each plan shall contain one or more summary sheets that list the following information for each field:

1. Name of the farmer/operator;
2. Field identification numbers to include the United States Department of Agriculture [Consolidated] Farm Service Agency tract and field numbers;
3. Field acreages;
4. Expected [~~crop~~ crops] or crop [~~rotation~~ rotations];
5. Crop nutrient needs per acre based on soil analysis results and soil productivity;
6. Legume nitrogen credits per acre;
7. Available nutrients in soil from previous crop and mineralization of organic residuals;
8. Recommended organic nutrient source application rates in tons per acre or 1,000 gallons per acre; plant available nitrogen as N, phosphorus as P₂O₅, and potassium as K₂O per acre; and spreading schedule to include approximate months of application;
9. Expected days for incorporation of organic nutrient sources into the soil if organic nutrient sources will be used;
10. Commercial fertilizer rates and timing of applications, including split applications of nitrogen and the possible use of soil nitrogen test results on a field before sidedressing with nitrogen.

E. Individual fields may be grouped together if similar soil productivity levels, soil fertility levels, and environmentally sensitive site features exist pertaining to subsection D of this section.

F. Each plan shall also contain the following information in summary or narrative form:

1. Identification and management of environmentally sensitive sites;
2. Quantities of manure produced on the farm, available manure storage capacity, and manure analysis;
3. Total manure used as crop nutrients, if any, including manure from both on farm and off farm sources based on plan recommendations and total land requirements for manure utilization;
4. Quantity of unused manure, if applicable, and recommendations on appropriate use options;
5. Liming recommendations if soil pH is below the optimal range;
6. Recommendations or fact sheets to ensure efficient application of fertilizers and organic nutrient sources and other best management practices to reduce the potential for the degradation of surface and groundwater quality, which may include but are not limited to:
 - a. Equipment calibration;
 - b. Application timing and method;
 - c. Crop rotation and agronomic practices;
 - d. Soil nitrate testing; and
 - e. Cover crop management;
7. Information on maintaining and updating a nutrient management plan. General comments about plan maintenance shall include:
 - a. The length of time the plan is effective, not to exceed [three five] years from the date the plan is developed; and
 - b. Identification of circumstances or changes in the farm operation such as an increase in animal numbers that would require the plan to be updated prior to the time specified in [this] subdivision 7 [~~a of this subsection~~].
8. Expected crop yields for each field for the planned crop rotation;
9. Other notes as needed pertaining to nutrient application, tillage, and other special conditions.

G. The nutrient management planner should incorporate additional plan requirements as appropriate if required by other specific regulatory or incentive programs which apply to a specific operator.

[§ 15.4 VAC 5-15-150.] Required nutrient management plan procedures.

A. Nutrient application.

1. A certified nutrient management planner shall include, in each plan, nutrient application practices for each field in the plan. The nutrient application rates shall be calculated for nitrogen (N), phosphate (P₂O₅), and

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potash (K_2O). Individual field recommendations shall be made after considering nutrients contained in fertilizers, manure, biosolids, legumes in the crop rotation, crop residues, residual nutrients, and all other sources of nutrients. Individual fields may be grouped together if similar soil productivity levels, soil fertility levels, and environmentally sensitive site features exist.

2. Nutrient application rates.

a. Determination of crop nutrient needs shall be consistent with tables and procedures contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995, and the Commercial Vegetable Production Recommendations, 1995 (Virginia Cooperative Extension Publication 456-420), and shall be based on soil test results for P_2O_5 and K_2O .

b. Nitrogen applications rates in nutrient management plans shall not exceed crop nutrient needs in subdivision 2 a of this subsection and phosphorus application rates should be managed to reduce adverse water quality impacts. Whenever possible, phosphorus applications from organic nutrient sources should not exceed crop needs based on a soil test over the duration of the crop rotation. If this is not possible, preference should be given to routing phosphorus in organic nutrient sources to fields having the lowest phosphorus soil analysis, fields to be rotated into crops such as alfalfa hay, or fields with predominately A and B slopes as identified in a soil survey.

c. The development and implementation of a comprehensive soil conservation plan [or practices] that [~~meets~~ meet] the criteria for a conservation system contained in the United States Department of Agriculture NRCS Field Office Technical Guide shall be recommended by a nutrient management planner on sites designated as highly erodible land (HEL) by the NRCS where a soil analysis indicates a very high phosphorus level (55 parts per million or above using Mehlich I extraction procedures or other methods correlated to Mehlich I) and phosphorus applications from organic sources will exceed crop uptake. If such sites are established pastures, the certified nutrient management planner shall recommend that pasture grasses or legumes be maintained at no less than a three-inch height in order to reduce runoff potential.

d. Recommended application rates for potassium, secondary nutrients, and micronutrients should be at agronomically or economically justifiable levels for expected crop production.

e. Expected crop yield shall be determined from [~~crop yield records~~ past crop yields] or soil productivity on a given field. [The farmer's past experience with crop yields in specific fields may be used to make reasonable adjustments to expected crop yields in lieu of verifiable yield records provided the upward adjustments impact no more than 20% of the fields on

a particular farm.] The calculation of expected crop yield shall:

(1) Be an average of the three highest yielding years taken from the last five years the particular crop was grown in the specific field, or

(2) Be based on and consistent with soil productivity information contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995.

f. [Representative] soil analysis results for [~~each~~ field fields] shall be determined by using standard soil sampling and analysis methods according to Agronomy Monograph #9, American Society of Agronomy utilizing the Mehlich I extraction procedure for phosphorus or other methods correlated to Mehlich I and utilizing correlation procedures contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995. Soil analysis results shall be dated no more than three years prior to the date of the nutrient management plan. A single composite soil sample should represent an area up to approximately 20 acres. Fields such as those common to strip cropping may be combined when soils, previous cropping history, and soil fertility are similar. Representative soil samples shall be obtained from the soil surface to a depth of two to four inches for fields which are not tilled, and to a depth of six to eight inches for fields which are tilled or have been tilled within the past three years. Soil sampling of fields based on grids of subfield areas may be utilized.

g. The most recent organic nutrient source analysis results or an average of past nutrient analysis results should be used to determine the nutrient content of organic nutrient sources. For plans on new animal waste facilities, average values published in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995, should be utilized unless proposed manure storage and treatment conditions warrant the use of alternative data. Plant available nutrient content shall be determined using the mineralization rates and availability coefficients found in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995, for different forms and sources of organic nutrients. Mineralization of organic nutrients from previous applications shall be accounted for in the plan.

h. The expected nitrogen contributions from legumes shall be credited when determining nutrient application rates at levels [which substantially conform to those] listed in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995.

3. Soil pH influences nutrient availability and should be adjusted to the level suited for the crop.

4. Nutrient application timing.

a. Timing recommendations for nutrient applications shall be as close to plant nutrient uptake periods as [reasonably] possible. To reduce the potential for

nutrient leaching or runoff, a certified nutrient management planner shall recommend planting an agronomically feasible crop within 30 days of the planned nutrient application if no actively growing crop is in place. For organic nutrient sources, planned applications may be recommended between December 21 and March 16, if necessary, if a crop will be planted during the normal spring planting season and sites have low surface runoff potential due to slope or crop residue or if management practices such as injection are recommended to reduce the potential for surface runoff of organic nutrient sources. A certified nutrient management planner shall utilize procedures contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995, to assist in determining the timing of nutrient applications.

b. The nutrient management planner shall recommend split application of inorganic nitrogen fertilizers as starter or broadcast and sidedressing or top dressing in row crops and small grains consistent with procedures contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995, on environmentally sensitive sites. Split applications of inorganic nitrogen fertilizers and irrigation scheduling shall be recommended for crops to receive irrigation. The use of a pre-sidedress nitrogen test (PSNT) can help to determine additional nitrogen needs during the growing period.

c. Nutrient applications on frozen or snow covered grounds should be avoided. If an emergency situation such as storage system freeze-up necessitates the application of organic nutrient sources, select fields which have slopes of less than 5.0% [and] which are [either] planted in cover crops [or have significant crop residue present].

5. Application method for nutrients.

a. The application of nitrogen shall be managed to minimize runoff, leaching and volatilization losses.

b. Applications of liquid manures or sludges utilizing irrigation shall not be recommended to be applied at rates above those contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995.

c. Plans shall not recommend liquid manure or sludge application rates utilizing nonirrigation liquid spreading equipment which exceed 14,000 gallons per acre (approximately one-half (0.5) inch) per application. The amount of liquid manure or sludge application in plans will not exceed the hydraulic loading capacity of the soil at the time of each application. If a subsequent pass across a field is necessary to achieve the desired application rate, the plan will allow for sufficient drying time.

d. Where possible, the planner should recommend that biosolids and manures be incorporated or injected in the crop root zone. Lime stabilized biosolids should not be injected due to the creation of a localized band

of high soil pH unless subsequent practices are utilized, such as disking, in order to adequately mix the soil.

e. The planner shall recommend buffer zones around wells, springs, surface waters, sinkholes, and rock outcrops where manure or biosolids should not be applied. Such buffer zones recommended shall be consistent with criteria contained in [Virginia] Nutrient Management Standards and Criteria, [Revised November] 1995.

B. Manure production and utilization.

1. The planner shall estimate the annual manure quantity produced on each farm utilizing tables and forms contained in Virginia Nutrient Management Standards and Criteria, [Revised November] 1995, or from actual farm records of manure pumped or hauled during a representative 12-month period.

2. The nutrient management plan shall state the total amount of manure produced and the amount that can be used on the farm, utilizing the information and methods provided in the Virginia Nutrient Management Standards and Criteria, [Revised November] 1995. The plan shall discuss any excess manure and shall provide recommendations concerning options for the proper use of such excess manure.

C. Plans shall identify and address the protection from nutrient pollution of environmentally sensitive sites.

D. Plan maintenance and revisions.

1. A site-specific nutrient management plan developed in accordance with all requirements of these regulations, including [a] specified [~~crop rotation system~~ crops or crop rotations], shall provide information on soil fertility and seasonal application of required nutrients for one to [~~three~~ five] years of crop production. [Plans developed for a period of time greater than three years and up to five years should generally be limited to sites in pasture or hay rotations.]

2. The plan shall indicate a need for modification if cropping systems, rotations, fields, animal numbers, animal type, or management are changed, added or removed. The planner shall state in the plan that such plan will be invalid if available land area for the utilization of manure decreases below the level necessary to utilize manure in the plan, or if changes in animal numbers or type affect land area necessary to utilize manure.

3. Adjustments to manure production and application should be made if there are increases in animal numbers or changes in how animal waste is stored or applied, or when there are changes in nutrient content of manure resulting from changing feed ration, animal types, or new sampling and analysis for nutrient content and application rate calculations.

4. Soil analysis shall be recommended for each field at least once every three years to determine the soil fertility and pH, and to update the nutrient management plan.

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5. Manure analysis shall be recommended before field application until a baseline nutrient content is established for the specific manure type on the corresponding farm operation. After a baseline nutrient content is established, a manure analysis shall be recommended at least once every three years for dry or semisolid manures, and at least once every year for liquid manures.

6. Modified top dressing or sidedressing application rates of nitrogen may be recommended if a pre-sidedress nitrogen test administered during the growing season indicates different levels of nitrogen than planning time calculations.

[7. ~~The planner should notify the farm operator if their operation is required to have a nutrient management plan by an established Virginia regulatory program.~~]

Documents Incorporated by Reference

(4 VAC 5-15-10 et seq.)

Virginia Nutrient Management Standards and Criteria, Department of Conservation and Recreation, Division of Soil and Water Conservation, Revised November 1995.

Virginia Commercial Vegetable Production Recommendations for 1995, Virginia Cooperative Extension Service, Publication No. 456-420.

Technical Guide, Soil Conservation Services, United States Department of Agriculture.

Methods of Soil Analysis, Part 1, Physical and Mineralogical Methods, Second Edition, 1986, American Society of Agronomy.

Methods of Soil Analysis, Part 2, Chemical and Microbiological Properties, Second Edition, 1982, American Society of Agronomy.

VA.R. Doc. No. R96-133; Filed December 6, 1995, 9:09 a.m.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

Title of Regulation: [~~VR-385-01-12.~~ 24 VAC 30-110-10 et seq.] Hauling Permit Manual (REPEALED).

VA.R. Doc. No. R96-136; Filed December 6, 1995, 10:49 a.m.

Title of Regulation: [~~VR-385-01-12:1.~~ 24 VAC 30-111-10 et seq.] Hauling Permit Manual.

Statutory Authority: §§ 33.1-12(3) and 33.1-49 and Article 18 (§ 46.2-1139 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

Effective Date: January 24, 1996.

Summary:

The revised Hauling Permit Manual of the Commonwealth Transportation Board identifies conditions under which hauling permits may be granted, and sets forth the fee structure for the permits.

The revised manual eliminates obsolete requirements and policies required to obtain hauling permits, expands weight allowances under general blanket conditions, and makes obtaining hauling permits less restrictive.

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 William Childress, Regulatory Coordinator, Virginia Department of Transportation Hauling Permit Section, 1221 East Broad Street, Richmond, VA 23219, telephone (804) 225-3676.

24 VAC 30-111-10 et seq. Hauling Permit Manual.

[CHAPTER 111. HAULING PERMIT MANUAL.]

PART I. GENERAL PROVISIONS.

[~~§-1.1.~~ 24 VAC 30-111-10.] Definitions.

"Automobile and watercraft transporters" means a tractor truck, lowboy, vehicle, or combination, including vehicles or combinations which transport motor vehicles or watercraft on their power unit, designed and used exclusively for the transportation of motor vehicles or watercraft.

"B-train assembly" means a rigid frame extension attached to the rear frame or a first semitrailer which allows for a fifth wheel connection point for the second semitrailer.

["Irreducible" see definition for "nondivisible."]

"Nondivisible load [~~-or vehicle~~] " means a [~~load or vehicle~~ vehicle configuration] exceeding applicable [~~length size~~] or weight limits which, if separated into smaller loads [~~or vehicles~~], would:

1. Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;
2. Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or
3. Require more than eight hours to dismantle using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

"Semitrailer" means a vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rest on or is carried by another vehicle.

"Stinger-steered automobile and watercraft transporters" means an automobile or watercraft transporter configured as a semitrailer combination wherein the fifth wheel is located on a drop frame behind the rearmost axle of the power unit.

"Tractor truck" means a motor vehicle designed and used primarily for drawing other vehicles and not constructed as to

carry a load other than a part of the load and weight of the vehicle attached to that vehicle.

"Trailer" means a vehicle without motive power designed for carrying property of passengers wholly on its own structure and for being drawn by a motor vehicle, including mobile homes.

"Truck" means a motor vehicle designed to transport property on its own structure independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

"Truck - tractor semitrailer - semitrailer" means in a truck-tractor semitrailer combination vehicle, the two trailing units are connected with a B-train assembly.

"Vehicle configuration" means the height, weight, width and length of a vehicle to include vehicle axle spacing.

[§ 1.2. 24 VAC 30-111-20.] General.

A. The Code of Virginia sets forth limitations of weight, width, height and length of objects and vehicles which may be moved upon state highways and also empowers the Commonwealth Transportation Board to issue oversize or overweight permits for vehicles traveling over Virginia's highways with loads that, when reduced to their smallest dimensions, exceed maximum legal limits.

B. The intent of establishing statutory limitations is to protect the [traveling] public from hazard and unnecessary inconvenience, and to preserve the capacity and structural integrity of highways and bridges. Also, it is assumed that the state legislature did not intend for the Department of Transportation to allow, by permit, the movement of any and all vehicles or loads over the highways where such movements would exceed statutory limitations (especially where other forms of transportation are available or when loads can be reasonably reduced to legal limits).

[C. The department has jurisdiction only on those roads maintained by the Virginia Department of Transportation. However, the Virginia Department of Transportation's hauling permit is valid for travel over city streets provided the streets are listed on the permit. Applicants must secure approval from local authorities prior to making movements over roads under local jurisdiction that are not listed on the Virginia Department of Transportation's hauling permit.]

[~~C. D.~~] The policy of the Department of Transportation is to give primary consideration to safety, comfort, convenience and economic interest of the general public and the protection of the state highway systems.

[§ 1.3. 24 VAC 30-111-30.] Authority; permits.

A. The Commissioner of the Department of Transportation or his designee shall issue [oversize or overweight] permits for qualifying vehicles. [~~Regardless of the route shown on the permit, a permitted vehicle shall travel an alternative route:~~

1. ~~If directed by a law enforcement officer.~~
2. ~~If directed by an official traffic control device.~~

~~If the specified route on the permit is officially detoured, the driver of the permitted vehicle shall contact the issuing permit office for a revision of the permit.]~~

B. Application for permits shall be made to the Department of Transportation or its designee by [~~telephone, wire service or written request~~] written request, through a wire service or via telecommunications]. Application for permits requiring a bridge engineering [~~study review~~] or other special conditions or considerations shall be submitted at least 10 working days prior to the date of the anticipated move.

C. Permits may be denied, revoked or declared invalid as stated in [~~§ 13 of this manual~~ 24 VAC 30-111-250].

D. Permits may be obtained in four different ways:

1. Calling the [~~Overweight/Oversize Hauling~~] Permit Office at (804) 786-2787; or
2. Appearing in person at any Virginia Department of Transportation [~~or DMV~~] office; or
3. Using a permit transmission service [~~(see Permit Service Contacts, § 13-1)~~]; or
4. Mailing an application to: Virginia Department of Transportation, [~~Overweight/Oversize Hauling~~] Permit Section, 1221 East Broad Street, Richmond, Virginia 23219.

PART II.

STATUTORY WEIGHT [AND SIZE] LIMITS FOR VIRGINIA.

[~~§ 2.4. 24 VAC 30-111-40.] Interstate system [and designated highways].~~

If the dimensions of the vehicle combination or nondivisible load, or both, exceed one of the following statutory limitations listed below, [~~an overweight or oversize a hauling~~] permit is required.

[~~Also see Axle Spacing chart (§ 2.3) for applicable weight allowances.]~~

Single Axle Weight: 20,000 pounds [or 650 pounds per inch of tire (width) in contact with the surface of the highway]

Tandem Axle Weight: 34,000 pounds (more than 40 inches but [~~less not more~~] than 96 inches between axle centers)

Gross Weight: [~~80,000 pounds~~ See 24 VAC 30-111-60. Legal weight allowed based on axle spacing]

Width: 8 feet 6 inches (excluding mirrors and safety devices)

Height: 13 feet 6 inches

Length: Trailer — 48 feet

Semitrailer — 53 feet including load

Twin trailers — 28 ½ feet

Tractor truck semitrailer combinations — No overall length restrictions

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	"L" 2 axles	3 axles	4 axles	5 axles	6 axles	7 or more axles
Automobile and watercraft transporters — 65 feet plus 3-foot overhang to front and 4-foot overhang to rear	4 34,000					
	5 34,000					
Stinger-steered automobile and watercraft transporters — 75 feet plus 3-foot overhang to front and 4-foot overhang to rear	6 34,000					
	7 34,000					
	8 34,000	34,000				
	9 39,000	42,500				
	10 40,000	43,500				
Tractor trucks shall not have more than one semitrailer attached.	11 44,000					
	12 45,000	50,000				
Trucks shall not have more than one trailer attached.	13 45,500	50,500				
	14 46,500	51,500				
Three motor vehicles shall be drawn only if coupled together by a saddle mount device.	15 47,000	52,000				
	16 48,000	52,500		58,000		
	17 48,500	53,500		58,500		
[§ 2.2. 24 VAC 30-111-50.] Primary and secondary systems.	18 49,500	54,000		59,000		
	19 50,000	54,500		60,000		
	20 51,000	55,500		60,500	66,000	
If the dimensions of the vehicle combination or nondivisible load, or both, exceed one of the following statutory limitations listed below, [an overweight or oversize a hauling] permit is required.	21 51,500	56,000		61,000	66,500	
	22 52,500	56,500		61,500	67,000	
	23 53,000	57,500		62,500	68,000	
	24 54,000	58,000		63,000	68,500	74,000
	25 54,500	58,500		63,500	69,000	74,500
[Also see Axle Spacing chart (§ 2.3) for applicable weight allowances.]	26 55,500	59,500		64,000	69,500	75,000
	27 56,000	60,000		65,000	70,000	75,500
Single Axle Weight: 20,000 pounds [or 650 pounds per inch of tire (width) in contact with the surface of the highway]	28 57,000	60,500		65,500	71,000	76,500
	29 57,500	61,500		66,000	71,500	77,000
	30 58,500	62,000		66,500	72,000	77,500
	31 59,000	62,500		67,500	72,500	78,000
	32 60,000	63,500		68,000	73,000	78,500
Tandem Axle Weight: 34,000 pounds (more than 40 inches but [less not more] than 96 inches between axle centers)	33 64,000	68,500		74,000	79,000	
	34 64,500	69,000		74,500	80,000	
	35 65,500	70,000		75,000		
	36 66,000	70,500		75,500		
Gross Weight: [80,000 pounds See 24 VAC 30-111-60. Legal weight allowed based on axle spacing]	37 66,500	71,000		76,000		
	38 67,500	72,000		77,000		
	39 68,000	72,500		77,500		
Width: 8 feet excluding mirrors. Safety devices not to exceed 3 inches on each side	40 68,500	73,000		78,000		
	41 69,500	73,500		78,500		
	42 70,000	74,000		79,000		
	43 70,500	75,000		80,000		
	44 71,500	75,500				
Height: 13 feet 6 inches	45 72,000	76,000				
	46 72,500	76,500				
Length: Truck — 40 feet excluding load	47 73,500	77,500				
	48 74,000	78,000				
Semitrailer — 48 feet	49 74,500	78,500				
	50 75,500	79,000				
Twin trailers — 28 ½ feet	51 76,000	80,000				
Tractor semitrailer combination — 65 feet including load						

[§ 2.3. Axle spacing chart. Maximum Weight in Pounds for Any Group of Two or More Consecutive Axles.

24 VAC 30-111-70. Maximum weight in pounds according to vehicle axle spacings allowed by permit without requiring an engineering review from the Bridge and Structure Division for any group of two or more consecutive axles.

All vehicle configurations shall be reduced to the smallest dimensions possible and those exceeding the specifications identified in this chart will require an engineering review before a permit can be issued.]

"L" is defined as the distance in feet between extremes of any group of two or more consecutive axles.

[24 VAC 30-111-60. Legal weight allowed based on axle spacing.

Legal weight in pounds for any group of two or more consecutive axles. A hauling permit is required when a vehicle configuration exceeds the weight limitations according to axle spacing.

"L" is defined as the distance in feet between the extremes of any group of two or more consecutive axles.

"L"	2 axles	3 axles	4 axles	5 axles	6 axles	7 or more axles
4	44,000					
5	44,000					
6	44,000					
7	44,000					
8	48,000	53,500				
9		54,500				
10		55,000				
11		56,000				
12		56,500	63,000			
13		57,500	63,500			
14		58,000	64,500			
15		59,000	65,000			
16		59,500	65,500	72,500		
17		60,500	66,500	73,000		
18		61,000	67,000	74,000		
19		62,000	67,500	74,500		
20		62,500	68,500	75,000	82,000	
21		63,500	69,000	75,500	82,500	
22		64,000	69,500	76,500	83,000	
23		65,000	70,500	77,000	84,000	
24		65,500	71,000	77,500	84,500	91,500
25		66,500	71,500	78,000	85,000	92,000
26		67,000	72,500	79,000	85,500	92,500
27		68,000	73,000	79,500	86,000	93,000
28		68,500	73,500	80,000	87,000	94,000
29		69,500	74,500	80,500	87,500	94,500
30		70,000	75,000	81,500	88,000	95,000
31		71,000	75,500	82,000	88,500	95,500
32		71,500	76,500	82,500	89,000	96,000
33			77,000	83,000	90,000	97,000
34			77,500	84,000	90,500	97,500
35			78,500	84,500	91,000	98,000
36			79,000	85,000	91,500	98,500
37			79,500	85,500	92,000	99,000
38			80,500	86,500	93,000	99,500
39			81,000	87,000	93,500	100,500
40			81,500	87,500	94,000	101,000
41			82,500	88,000	94,500	101,500
42			83,000	89,000	95,000	102,000
43			83,500	89,500	96,000	102,500
44			84,500	90,000	96,500	103,000
45			85,000	90,500	97,000	104,000
46			85,500	91,500	97,500	104,500
47			86,500	92,000	98,000	105,000
48			87,000	92,500	99,000	105,500
49			87,500	93,000	99,500	106,000
50			88,500	94,000	100,000	106,500
51			89,000	94,500	100,500	107,500
52			89,500	95,000	101,000	108,000
53			90,500	95,500	102,000	108,500
54			91,000	96,500	102,500	109,500
55			91,500	97,000	103,000	109,500
56			92,500	97,500	104,000	110,000
57			93,000	98,000	104,500	111,000
58			94,000	99,000	105,000	111,500
59			94,500	99,500	105,500	112,000
60			95,000	100,000	106,000	112,500
61			96,000	101,000	106,500	113,000
62				101,500	107,000	113,500
63				102,000	108,000	114,500
64				102,500	108,500	115,000

[24 VAC 30-111-80. Maximum axle weights.

Single Axle Weight:	24,000 (or 850 pounds per inch, width of tire measured in contact with the surface of the road).
Tandem Axle Weight:	Refer to axle spacing chart (24 VAC 30-111-70)
Tri-Axle and Quad-Axle Groups:	Refer to axle spacing chart (24 VAC 30-111-70)]

PART III.
DESCRIPTIONS, REQUIREMENTS AND LIMITATIONS OF
SPECIAL PERMITS AVAILABLE.

[§ 3-4. 24 VAC 30-111-90.] Blanket permit.

A [general] blanket permit allows frequent movements within a specified time frame on designated or all unrestricted routes, or both, unless posted otherwise, in Virginia. [General] blanket permits will be issued on a case-by-case basis and only after an appropriate engineering [study review] has been completed to ensure the vehicle configuration will not damage bridges and structures throughout the state or along the designated route. Results of the engineering [study review] may render configuration ineligible for a [general] blanket permit. Request for [general] blanket permits should be made at least 10 work days prior to the anticipated date of movement.

[General] blanket permits may only be obtained through the Virginia Department of Transportation central office [or Department of Motor Vehicles] and the cost is \$45 for a one-year permit and \$85 for a two-year permit. The Department of Motor Vehicles [will may] assess a monthly fee for each mile the vehicle operates under the blanket permit. The fee is \$.10 per mile and is charged for vehicles or equipment [or both,] that cannot be licensed in Virginia due to the vehicle or equipment size exceeding statutory limitations. The applicant will pay this fee directly to the [Motor Carrier Division,] Department of Motor Vehicles [at,] 2300 West Broad Street, Richmond, Virginia 23219.

[24 VAC 30-111-100. Restricted blanket permit.

A restricted blanket permit may be issued when an engineering review reveals that the vehicle's configuration does not warrant unrestricted travel throughout Virginia and therefore should not be granted a general blanket permit. Restricted blanket permits can be issued for a period not to exceed six months. Results of the engineering review may render the vehicle configuration ineligible to receive a restricted blanket permit. Requests for restricted blanket permits shall be made at least 10 work days prior to the anticipated date of movement.

Restricted blanket permits may be obtained through the VDOT Central Office for a cost of \$45. The Department of Motor Vehicles may assess a monthly fee for each mile the vehicle operates under the restricted blanket permit. The fee is \$.10 per mile and is charged for vehicles that cannot be licensed in Virginia due to vehicle or equipment size exceeding statutory limitations.]

If the [applicant's] vehicle configuration exceeds any of the parameters listed below [and an engineering review had determined the configuration ineligible to operate under a general or restricted blanket permit], the applicant [shall may] apply for a single trip or superload permit.

Width	14 feet (Manufactured housing - 14 feet plus 12-inch side overhang)
Weight	[115,000 pounds gross (7 axles with 64 feet of axle-spacing) See 24 VAC 30-111-60 -- Maximum weight allowed by permit based on axle spacings

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Length: 100 feet

Height: 14 feet]

[~~Maximum Axle Weights:~~

~~Single — 24,000~~

~~Tandem — 44,000~~

~~Tri-Axle and Quad-Axle groups refer to Axle Spacing Chart (§ 2-3).]~~

[§ 3-2. 24 VAC 30-111-110.] Single trip permit.

A single trip permit is issued to cover one movement between two specific points within a [~~10-day~~ 13-day] period. The [~~10-day~~ 13-day] travel window is allowed to give the transporter flexibility in case of inclement weather or unforeseen circumstances beyond the mover's control. Single trip permits may be obtained through [~~the Department of Motor Vehicles,~~] a permit transmission company [~~(see Permit Transmission Company Listing, § 13.4)~~], the Virginia Department of Transportation central office [~~;~~ and any] Virginia Department of Transportation district [~~office or Virginia Department of Transportation or~~] residency office [~~(see Virginia Department of Transportation Contact Listing, § 43.2)~~].

Single trip permits are \$12 each. Vehicles or equipment that cannot be licensed in Virginia because they exceed statutory size or weight limitations [~~or both~~] will pay the single permit price plus a fee of \$.10 per mile [~~for each mile traveled under the authority of the permit~~]. The fee of \$.10 per mile is collected prior to the issuance of the single trip permit.

If vehicle configuration [~~or load weight exceed~~ exceeds] any of the parameters listed below, the applicant shall apply for a superload permit.

Height: 15 feet

Width: 14 feet

Length: 150 feet Note: Fairfax County: 100 feet on noninterstate routes. Virginia Beach, Norfolk, Portsmouth and Chesapeake: 100 feet to a [bridge job] site.

Gross Weight: 130,000 pounds — secondary and primary [~~150,000~~ 150,100] pounds — interstate

[§ 3-3. 24 VAC 30-111-120.] Superload permit.

A. A superload permit is required for all movements that exceed the maximum parameters established for single trip hauling permits. Movements with a width in excess of 14 feet will be required to travel on a specific date. Superload permits will be issued on a case-by-case basis after an appropriate engineering [~~study review~~] has been completed to ensure the applicant's vehicle configuration will not damage bridges and structures on the designated route of travel. Results of the engineering [~~study review~~] may render the applicant's vehicle configuration ineligible for movement along Virginia's highways.

Superload permits can only be obtained through the Virginia Department of Transportation central office.

Requests for superload permits should be made at least 10 workdays prior to the anticipated date of movement.

Superload permits cost \$12 each, plus a \$4.00 research fee per structure crossed. [~~In order to safely route vehicle configurations with superload dimensions, a bridge engineering study is required. Each structure along the proposed route will be analyzed to ensure the dimensions of the superload vehicle will not cause damage to the structure.~~] All structures on the interstate system will count as one structure.] Vehicles or equipment that cannot be licensed in Virginia because they exceed statutory size or weight limitations [~~, or both,~~] will also incur an additional charge of \$.10 per mile. The fee of \$.10 per mile is collected prior to the issuance of the superload permit.

B. Requirements for superload permits are described in this subsection:

1. The Preliminary Review Request form is required on all superloads exceeding single trip weight limitations. This form shall list all pertinent information needed to start the required engineering [~~study review~~]. The form requires information such as company name and address; dimensions of vehicle and load; origin and destination; diagram of vehicle to include axle spacing and axle weight; and route of preference. It takes approximately 10 business days to receive the results of the request. A Preliminary Review Request form can be obtained by calling (804) 786-2787.

2. Superload permit requests with dimensions in excess of [~~15~~ 16] feet high or [~~14~~ 16] feet wide or 151,000 pounds, or any combination, shall be accompanied by a valid certificate or letter of insurance from the issuing insurance agent or agency. Insurance shall be valid through completion of move. Coverage shall be \$500,000 or more. Insurance shall [~~be sufficient to~~] cover damage to Virginia's highways, bridges and structures [~~resulting from use by the applicant caused by the transporting vehicle combination~~].

3. A letter of variance is requested on all movements that exceed 14 feet in width or 150 feet in length, or both. The shipper or the manufacturer of the oversized item should submit the information listed below to the Virginia Department of Transportation central office, FAX (804) 786-5722, or mail it to Virginia Department of Transportation, [~~Overweight/Oversize Hauling~~] Permit Section, 1221 East Broad Street, Richmond, Virginia 23219. The letter shall list, in detail:

- a. Name and description of the item being moved;
- b. Overall loaded dimensions for the vehicle configuration to include height, width, length and gross weight;
- c. Explanation of why the load cannot be reduced;
- d. Explanation of why the load cannot be transported by air, rail or water;
- e. Origin and destination specific to Virginia, including mileage and specific intersecting routes (e.g., Route 65 - 1 mile south of Route 2 in Campbell County);

f. Preferred routes of travel; and

g. Point of contact in case additional information is needed.

PART IV. TRAVEL RESTRICTIONS.

[~~§ 4.1.~~ 24 VAC 30-111-130.] Travel restrictions; holiday travel; days and times of travel; speed limits.

A. Permitted vehicle configurations are allowed to travel on all holidays except the following state observed holidays:

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Note: On the holidays mentioned above, permits will not be valid from noon the preceding weekday through the holiday. If the observed holiday falls on a Monday the permit will not be valid from noon on the preceding Friday through Monday.

B. Normal times of travel for permitted loads is 30 minutes after sunrise to 30 minutes before sunset, Monday through [Friday Saturday]. [~~In heavy traffic areas normal travel times are from 9 a.m. until 4 p.m. Travel is permitted on Saturday from 30 minutes after sunrise to noon.~~ No permitted travel is allowed within the corporate limits of cities/towns between the hours of 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. except for configurations that are overweight or overheight only or any combination of the two.] No travel is allowed on Sundays or state observed holidays. The [~~department's~~ ~~Oversize/Overweight Hauling~~] Permit Section shall have the authority to route vehicles outside the normal hours of travel or restrict times of travel during normal hours of travel if it is determined necessary giving primary consideration to the safety and well being of the traveling public.

When road conditions, visibility or unfavorable weather conditions make traveling hazardous to the operator or the traveling public, permitted vehicles are not authorized to operate, unless responding to an emergency. Vehicles which are underway when inclement weather occurs shall exit the road at the first available safe location and park in a safe place until the weather clears or until road conditions improve to allow safe travel conditions. Law enforcement judgment shall prevail in all circumstances.

C. Unless otherwise specified within the permit, the maximum speed limit [for all permitted vehicles] is 10 miles per hour less than the posted speed limit.

PART V. MANUFACTURED HOUSING.

[~~§ 5.1.~~ 24 VAC 30-111-140.] Manufactured housing.

Upon request, the applicant may obtain a blanket, single trip or superload permit whenever the dimensions of a

manufactured housing unit, exclusive of towing vehicle, are such that the unit cannot be licensed under existing state statutes. A \$1.00 trip fee is levied on mobile homes due to overdimensional features.

1. [General] blanket permit fee is \$45 for one year and \$85 for two years. A \$1.00 trip fee for each move made [~~on the~~ under the authority of the general] blanket permit [is will be] assessed by the Department of Motor Vehicles and is paid monthly to: [~~DMV~~ Department of Motor Vehicles, Motor Carrier Division], 2300 West Broad Street, Richmond, Virginia 23220.

2. Single trip permit fee is \$12 plus \$1.00 trip fee.

3. Superload permit fee is [~~\$45~~ \$12] plus a \$1.00 trip fee.

4. See Part VI, Escort Services and Other Safety Requirements (24 VAC 30-111-150 et seq.).

5. See Part III, Descriptions, Requirements and Limitations of Special Permits Available for applicable permit requirements (24 VAC 30-111-90 et seq.).

PART VI. ESCORT SERVICES AND OTHER SAFETY REQUIREMENTS.

[~~§ 6.1.~~ 24 VAC 30-111-150.] Escort certification.

Certification as an escort driver is mandatory for all drivers, regardless of their residencies, who escort overdimensional loads with a width in excess of 12 feet over the highways of the Commonwealth of Virginia. The Virginia Escort Driver Certification Program consists of a written knowledge test which shall be successfully completed before a certificate is issued. Applicants residing outside Virginia can arrange to take the test in their [states state] of residence. For more information concerning Escort Certification in Virginia, call the [~~local Department of Motor Vehicles customer service center~~ Virginia Department of Transportation at (804) 786-2787].

[~~§ 6.2.~~ 24 VAC 30-111-160.] Escort vehicle requirements.

A. Depending on the route being traveled, escorts may be required for vehicle configurations exceeding 10 feet in width or [~~44~~ 15] feet in height or 85 feet in length or when results of an engineering [study review] show that escorts are needed to provide traffic control across restricted bridges and structures.

B. All escort vehicles shall be equipped with a two-way radio and maintain communication with the permitted vehicle driver and any other escort vehicles in the convoy.

C. Escort vehicles shall have signs, descriptive of the load it is escorting, i.e., "Wide Load" or "Oversize Load" or "Overdimensional Load" [or "Overweight Load"] displayed on the vehicle to be visible to approaching motorist in day or night. Escort vehicle(s) shall maintain adequate distance [with a minimum of 500 feet] in front of or behind permitted vehicle configuration [~~(300 to 800 feet)~~] to warn approaching motorists of the oversize or overweight vehicle configuration.

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D. At least one amber high-intensity flashing, blinking or alternating light shall be located on top of the escort vehicle. The light shall be visible for a distance of 500 feet or greater.

E. The escort vehicle's headlights and any other steady burning exterior lights shall be turned on while escorting an overweight or oversize permitted vehicle.

F. A front escort vehicle equipped with a hot-pole is required when the overall height of a vehicle configuration exceeds 15 feet. The hot-pole shall extend three inches above the specified overall height of the permitted load.

[§ 6-3. 24 VAC 30-111-170.] Safety requirements.

A. When an overdimensional movement is routed upon any highway which is too narrow for two-way travel at all points, the front escort vehicle or a flagman shall advance to a point where two-way traffic can be maintained, stopping oncoming traffic at that location. When the load reaches the location where traffic is stopped, the overdimensional unit shall halt and allow traffic to clear from both directions, the front escort vehicle or flagman shall then advance to the next part for stopping traffic.

B. Red flags or [any highly visible] fluorescent [orange colored] flags shall be displayed at each of the four corners of any vehicle configuration that is overwidth or overlength. Flags shall be placed at the extremities of the width or length. Flags must be 18 inches square and in good condition. Flags are not required when the vehicle is overheight or overweight.

C. When required to post a flagman to warn and direct approaching traffic, each flagman shall be wearing a red [or any highly visible fluorescent colored] jacket or vest and equipped with [a] red [flag flags] or [paddle fluorescent orange flags and paddles] reading "STOP" in white letters with red background. Flagmen shall not be less than 18 years of age and capable of carrying out flagging responsibilities.

D. Overdimensional vehicles and loads. One amber flashing light shall be located on top of [the] towing vehicle plus one amber flashing light shall be located on upper rear of [the] vehicle or load being hauled, towed or self-propelled. Lights shall be visible for [a distance of] 500 feet [or greater].

PART VII.

EMERGENCY SERVICES AND NATIONAL DEFENSE MOVES.

[§ 7-1. 24 VAC 30-111-180.] Emergency moves.

Requests for emergency moves will be carefully reviewed. An emergency is defined as "a calamity, existing or imminent, caused by fire, flood, riot, windstorm, explosion or act of God, which requires immediate remedial action to protect life or property." All emergency move requests shall be made through the Virginia Department of Transportation [Overweight/Oversize Hauling] Permit Office at (804) 786-2787. After normal [duty office] hours call the Emergency Operations Center at 1-800-367-7623.

[§ 7-2. 24 VAC 30-111-190.] National defense moves.

The U.S. Department of Defense's Military Traffic Command shall be the sole certifying agency during peacetime for all movements made by an agency declared essential to the national defense. During a national emergency, movements essential to national defense would be far greater in scope, and those not under direct control of one of the military departments or Department of Defense agencies would be certified by the appropriate emergency transportation authority.

PART VIII.

NO COST PERMITS.

[§ 8-1. 24 VAC 30-111-200.] Eligibility requirements.

[An applicant is eligible to receive a permit at no cost as described in this section. Listed below are some of the most frequently issued no cost permits. For information about additional no cost permits contact the Virginia Department of Transportation at (804) 786-2787.]

1. Containerized cargo. When transporting containerized cargo in a sealed seagoing container bound to or from a seaport, and the seagoing container has been or will be transported by marine shipment, the applicant is eligible to receive a permit at no cost. The contents of the seagoing container shall not be changed from the time it is loaded by the consignor or his agents to the time it is delivered to the consignee or his agents.

2. Coal hauling. When hauling coal from a mine or other place of production to a preparation plant, loading dock or railroad, the applicant is eligible to receive without cost, an overweight permit for coal hauling. No permit shall be valid for the operation of any such vehicle for a distance of more than 35 miles from the preparation plant, loading dock or railroad.

3. Solid waste. When hauling solid waste, other than hazardous waste, the applicant is eligible for an overweight permit at no cost.

4. Concrete haulers. Three axle vehicles used exclusively for the mixing of concrete in transit or at a project site or for transporting necessary components in a compartmentalized vehicle to produce concrete immediately upon arrival at a project site are eligible to receive an overweight permit at no cost.

5. Virginia-grown farm produce. Vehicles used to haul farm produce grown in Virginia are eligible to receive an overweight permit at no cost. Permits are valid only in Accomack and Northampton Counties.

6. Federal and state government agencies. Vehicles registered in the name of the United States Government or state agencies shall receive without cost, an overweight or oversize permit when required to travel across Virginia's highway system.

PART IX.
BUILDING MOVEMENT.

[§ 9.1. 24 VAC 30-111-210.] Applications.

Applications for building movements shall be made through the Virginia Department of Transportation residency office where the move is taking place (see [§ 43.2 24 VAC 30-111-270] for addresses and phone numbers [of the district offices]). Building movement applications are reviewed and approved by the residency office on a case-by-case basis and approval of any move will not set a precedent for another. Building movements are prohibited on the holidays listed in [§ 9.2. 24 VAC 30-111-220].

[§ 9.2. 24 VAC 30-111-220.] Holiday restrictions.

Movement will not be permitted from noon on the preceding day through the following holidays:

- New Years Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

If the observed holiday falls on a Monday the movement will not be permitted from noon on the preceding Friday through Monday.

PART X.
RESPONSIBILITIES.

[§ 10.1. 24 VAC 30-111-230.] Compliance with state laws.

The acceptance of a permit by the applicant is his agreement that the vehicle or object can and will be moved strictly in compliance with the terms set forth in the permit; that the operator and vehicle are properly licensed; that the information given by him and as shown on the permit is correct; and that all legal requirements concerning operational authority imposed by Motor Vehicle Laws of Virginia [; ,] Department of Motor Vehicles or the Interstate Commerce Commission have been complied with by the applicant.

[§ 10.2. 24 VAC 30-111-240.] Injury or damage.

The permittee assumes all responsibility for an injury to persons or damage to public or private property caused directly or indirectly by the transportation of vehicles and loads under permit. Furthermore, the permittee agrees to hold the Commonwealth of Virginia, Department of Transportation and its employees and other state agencies and their employees harmless from all suits, claims, damages or proceedings of any kind, as a direct or indirect result of the transportation of the permitted vehicle.

PART XI.
DENIAL; REVOCATION; REFUSAL TO RENEW; APPEAL;
INVALIDATION.

[§ 11.1. 24 VAC 30-111-250.] Denial; revocation; refusal to renew; appeal; invalidation.

A. An overweight or oversize permit may be revoked upon written findings that the permittee violated the terms of the permit, which shall incorporate by reference these rules, as well as state and local laws and ordinances regulating the operation of overweight or oversized vehicles. Repeated violations may result in a permanent denial of the right to use the state highway system or roads for transportation of overweight and oversized vehicle configurations. A permit may also be revoked for misrepresentation of the information on the application, fraudulently obtaining a permit, alteration of a permit, or unauthorized use of a permit.

B. [~~Overweight or oversize Hauling~~] permits may be denied to any applicant or company, or both, for a period not to exceed six months when the applicant or company or both has been notified in writing by the Department of Transportation designee that violations existed under a previously issued permit.

C. No permit shall be denied or revoked, or renewal refused, until a written notice of the denial or violation of the issued permit has been furnished to the applicant. The permittee may appeal in writing to the state maintenance engineer or his designee within 10 working days of receipt of written notification of denial or revocation [setting forth the grounds for taking an appeal. An informal fact finding conforming to the requirements of § 9-6.14:11 of the Code of Virginia will be conducted by the state maintenance engineer or his designee will issue a case decision which will be the final administrative step. Judicial review of such decision shall be available pursuant to Article 4 (§ 9-6.14:15 et seq.) of Chapter 1.1:1 of the Administrative Process Act.]. [~~A written decision by the state maintenance engineer or his designee addressing the appeal must be made within 10 working days to the applicant. The decision of the state maintenance engineer or his designee shall be final.~~] Upon revocation of the permit, it must be surrendered without consideration for refund of fees. Upon restoration of permit privileges a new [~~overweight or oversize hauling~~] permit must be obtained prior to movement on the state highway system.

D. Permits will be invalid if the vehicle or vehicle combination is found by a law-enforcement officer to be operating in violation of permit conditions regarding route, time of movement, licensing, number of axles or any special conditions contained within the permit.

PART XII.
TRANSPORTATION OF EXPLOSIVES, RADIOACTIVE AND
OTHER HAZARDOUS MATERIALS.

[§ 12.1. 24 VAC 30-111-260.] Transportation of explosives, radioactive and other hazardous materials.

A. A person, shipper or carrier transporting or proposing to transport explosives or other hazardous materials shall do so in compliance with all provisions of 49 CFR [Parts] 100 [- through] 180.

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Hazardous materials are those described by class in 49 CFR [~~Parts~~] 173 [- through] 180.

B. All transporters who haul hazardous waste into Virginia for the purpose of storage, treatment or disposal shall apply for and receive an Environmental Protection Agency (EPA) identification number which is unique to the transporter, and apply for a transportation permit from the Virginia Department of Health.

Transporters of hazardous waste generated outside of Virginia and designated for delivery to a treatment, storage or disposal facility in another state shall conform with the manifest requirements of those states or EPA, as prescribed in 40 CFR [~~Part~~] 262. Specific questions regarding the movement and permitting of hazardous materials and hazardous waste should be addressed to:

Department of Environmental Quality
629 East Main Street
P.O. Box 10009
Richmond, Virginia 23240-0009
Phone: 804- [~~762-4024~~ 527-5081]

Questions regarding the movement of Hazardous Materials through tunnels or bridges, or both, shall be addressed to:

Department of Transportation
Hazardous Materials Officer
1221 East Broad Street
Richmond, Virginia 23219
Phone: 804-371-0891

Questions regarding hazardous material spills or incidents shall be addressed to:

CHEMTREC
1-800-424-9300 (24 hours a day)

PART XIII. SERVICE CONTACTS.

[~~§ 13.1. Permit service contact numbers.~~

~~Transceiver United, Incorporated
P.O. Box 816348
Dallas, TX 75381
Phone: 1-800-749-7174~~

~~Cummins Permit Express
P.O. Box 816348
Dallas, TX 75381
Phone: 1-800-749-7174~~

~~Maryland Permit Service
828 Dulaney Valley Road
Towson, MD 21204
Phone: (410) 337-8454~~

~~Transcom Incorporated
5900 Sharon Woods Boulevard
P.O. Box 29357
Columbus, OH 43229
Phone: 1-800-888-3651~~

~~Xero Fax, Incorporated
282 Central Avenue
Albany, NY 12206~~

~~Phone: 1-800-833-3762~~

~~State Permits—National Permits Incorporated
P.O. Box 25498
North Canton, OH 44735
Phone: 1-800-331-4805~~

~~Virginia Permit Service, Incorporated (Interstate)
2208 S. Hamilton Road
P.O. Box 32493
Columbus, OH 43232
Phone: 1-800-343-4889~~

~~Transport Permits
1729 Falls Avenue
Waterloo, IA 50701
Phone: 1-800-373-9033~~

~~NOVA Permit Service
1245 Ch. Ste-Fay
Suite 106
Quebec, PQ G154P2
Phone: 1-800-567-775~~

~~Tel-Trans
National Permit Service
3520 N. Post Road, Suite 150
Indianapolis, IN 40226
Phone: 1-800-428-5421]~~

[~~§ 13.2 24 VAC 30-111-270.] Virginia Department of Transportation contact numbers.~~

~~Central Office:~~

~~Virginia Department of Transportation
Hauling Permit Section
1221 East Broad Street
Richmond, Virginia 23219
Phone: 804-786-2787 FAX: 804-786-5722~~

~~District Offices [and Residencies]:~~

~~Bristol District
P.O. Box 1768
870 Bonham Road
Bristol, VA 24203
[District Office 703 Phone: 540] -669-9903~~

~~[Residencies~~

~~Abingdon — 703-676-5503 — P.O. Box 729, Abingdon,
VA 24212~~

~~Jonesville — 703-346-1911 — P.O. Box 704, Jonesville,
VA 24263~~

~~Lebanon — 703-889-3131 — P.O. Box 127, Lebanon,
VA 24266~~

~~Fazewell — 703-988-2566 — P.O. Box 270, Fazewell,
VA 24561-0270~~

~~Wise — 703-328-9331 — P.O. Box 60, Wise, VA
24293~~

~~Wytheville — 703-228-2153 — P.O. Box 531, Wytheville,
VA 24382]~~

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Culpeper District
P.O. Box 671
1601 Orange Road
Culpeper, VA 22701

[District Office 703 Phone: 540] -829-7536

[Residencies

Charlottesville 804-293-0014 P.O. Box 2013,
Charlottesville, VA
22902

Culpeper 703-829-7687 P.O. Box 671, Culpeper,
VA 22701

Louisa 703-967-3710 P.O. Box 484, Louisa, VA
23093

Warrenton 703-347-6443 P.O. Box 33, Warrenton,
VA 22186]

Fredericksburg District
P.O. Box 808
Fredericksburg, VA 22404

[District Office 703 Phone: 540] -899-4233

[Residencies:

Bowling Green 804-633-5091 P.O. Box 369, Bowling
Green, VA 22427

Fredericksburg 703-899-4300 P.O. Box 808,
Fredericksburg, VA
22404

Saluda 804-758-2321 P.O. Box 184, Saluda,
VA 23149

Warsaw 804-333-3696 P.O. Box 38, Warsaw,
VA 22572]

Lynchburg District
P.O. Box 11649
4219 Campbell Avenue
Lynchburg, VA 24506

[District Office Phone:] 804-947-6567

[Residencies:

Amherst 804-946-7631 P.O. Box 190, Amherst,
VA 24521

Appomattox 804-352-7135 P.O. Box 249,
Appomattox, VA 24522

Chatham 804-432-8124 P.O. Box 309, Chatham,
VA 24531

Dillwyn 804-983-2017 P.O. Box 10, Dillwyn, VA
23936

Halifax 804-476-6342 P.O. Box 759, Halifax,
VA 24558]

Northern Virginia District
3975 Fair Ridge Drive
Fairfax, VA 22033-2906

[District Office Phone:] 703-934-7317

[Residencies:

Fairfax 703-359-1220 3565 Chainbridge Road,
Fairfax, VA 22030

Leesburg 703-771-2522 41 Lawson Road S.E.,
Leesburg, VA 22075

Manassas 703-361-2151 P.O. Box 249, Manassas,
VA 22110]

Richmond District
2400 Pine Forest Drive
Colonial Heights, VA 22834

[District Office Phone:] 804-524-6004

[Residencies:

Amelia 804-561-2411 P.O. Box 185, Amelia,
VA 23002

Ashland 804-798-8338 523 Washington Hwy.,
Ashland, VA 23005

Chesterfield 804-674-2800 P.O. Box 35044,
Richmond, VA 23235

Petersburg 804-732-6811 P.O. Box 2168,
Petersburg, VA 23804

Sandston 804-737-6441 P.O. Box R., Sandston,
VA 23150

South Hill 804-447-3159 1013 W. Atlantic Street,
South Hill, VA 23970]

Salem District

731 Harrison Avenue
Salem, VA 24153

[District Office 703 Phone: 540] -387-5346

[Residencies:

Bedford 703-586-3552 P.O. Box 446, Bedford,
VA 24523

Christiansburg 703-381-7200 P.O. Box 420,
Christiansburg, VA
24073

Hillsville 703-728-2813 P.O. Box 188, Hillsville,
VA 24343

Martinsville 703-629-2581 P.O. Drawer 3631,
Martinsville, VA 24115

Rocky Mount 703-483-5262 P.O. Box 609, Rocky
Mount, VA 24151

Salem 703-387-5488 P.O. Box 3071, Salem,
VA 24153]

Staunton District

P.O. Box 2249
Staunton, VA 24401

[District Office 703 Phone: 540] -332-9093

[Residencies:

Edinburg 703-984-4133 P.O. Box 278, Edinburg,
VA 22824

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~~Harrisonburg 703-434-2586 P.O. Box 509,
Harrisonburg, VA 22284~~
~~Lexington 703-463-3108 P.O. Box 934, Lexington,
VA 24450~~
~~Luray 703-743-6585 P.O. Box 308, Luray, VA
22835~~
~~Verona 703-248-9320 P.O. Box 940, Verona,
VA 24482]~~

City 81 Stephens City [§ 703 540] -869-2833
 10. Suffolk 58 Suffolk 804-539-0356
 11. Troutville 81 Troutville [703 540] -992-4291

VA.R. Doc. No. R96-135; Filed December 6, 1995, 10:49 a.m.

Suffolk District
 1700 North Main Street
 P.O. Box 1070
 Suffolk, VA 23434

[District Office Phone:] 804-925-2514

[Residencies:

~~Accomack 804-787-1550 P.O. Box 270, Accomack,
VA 23301~~
~~Franklin 804-562-3194 P.O. Box 496, Accomack,
VA 23301~~
~~Norfolk 804-494-2451 P.O. Box 1366,
Chesapeake, VA 23237~~
~~Suffolk 804-925-2261 P.O. Box 1070, Suffolk,
VA 23434~~
~~Waverly 804-834-3394 P.O. Box 45, Waverly,
VA 23890~~
~~Williamsburg 804-253-4832 P.O. Box HD,
Williamsburg, VA 23187-3608]~~

PART XIV.

VIRGINIA DEPARTMENT OF TRANSPORTATION
 PERMANENT WEIGH STATIONS.

[§ 14.1. 24 VAC 30-111-280.] Permanent weigh stations.

Operators of trucks which have a registered gross weight in excess of 7,500 pounds are required by law to drive their vehicles onto scales for weight inspection as directed by either a police officer or regulatory highway sign. A police officer may require the operator of a truck to drive a distance not to exceed 10 road miles to a scale facility for weight inspection. Refusal to drive onto scales for inspection is a misdemeanor. Locations and telephone numbers for the weigh stations in Virginia are as follows:

	Station	Route	Location	Phone
1.	Alberta	85	Alberta	804-949-7336
2.	Aldie	50	Aldie	703-327-6938
3.	Bland	77	Bland	[703 540] -688-4721
4.	Carson	95	Carson	804-861-6565
5.	Dahlgren	301	Dahlgren	[703 540] -663-2295
6.	Dumfries	95	Triangle	703-221-5344
7.	New Church	13	Temperanceville	804-824-3614
8.	Sandston	64	Sandston	804-328-3057
9.	Stephens			

17. Is the transporting undercarriage permanently attached to the housing unit? Yes No
 If the answer to the above is no, please answer the following:
 Is the transporting undercarriage a legally licensed vehicle? Yes No

PERMIT SELECTION

18. Check permit type needed and complete cost:
 (A) Undrivable loads exceeding 3 feet to 14 feet wide and any combination or singular height, length or weight thereof, designated as a "General Hauling Permit".
 \$10 each - Single trip permit - expires 13 days from issuance.
 "Blanket Term Permit" (Check appropriate block)
 \$30 each - one (1) year
 \$60 each - Two (2) years
 \$50 each building movements (and widths in excess of 14 feet requiring an engineering study) Fee payable whether a permit is issued or not.

(B) Virginia Department of Motor Vehicles - Mileage Fee Applicable
 \$0.10 per mile fee is charged on all vehicles operating under permit which exceeds statutory weight limitations and for vehicles which cannot be legally licensed.
 A \$1 per trip fee is levied on mobile homes that are unlicensed due to overdimension. Mobile homes are excluded from paying the \$0.10 per mile fee.

(C) PAYMENT

Cash, check or money order payable to Virginia Department of Transportation. Facsimile request must be prepaid by a transmission company.

(D) Drivable Load Exceptions - Permits Issued "Free" designated by name below:

- Coal hauling permits (Use Form MP-104)
 - Old equipment permits
 - Concrete mixed-in-trait permits
 - Farm produce hauling permits
 - Contaminated Cargo permits (lowweight/overlength)
 - Solid Waste Permits
- Note: Complete permit application questions 1, 2, 7, 8, 9, 13, 14, 18(D) and 19 only!

Fees will NOT be assessed for permits issued to any office or agency of the United States Government, the Commonwealth of Virginia provided the vehicle is registered in the name of such government, its agency, subdivision or municipal corporation.

(E) ISSUANCE OF PERMITS

(A) Blanket permits to be issued only by the Central Office.
 (B) All other permits requiring movement in two or more districts to be issued only by the Central Office.
 (C) Permits for movements within a district may be issued by the Central Office, District Office or the Residency Office.

Prepayment Required - Remittance payable Virginia Department of Transportation
 Total amount enclosed \$ _____ check cash money order
 Please allow five (5) working days for processing permit request.
 Note: Facsimile request must be prepaid by a transmission company authorized to handle such transactions.

19. Signature of applicant or designated agent _____
 All applicable items on this form must be completed before your request can be considered. Reread information furnished to avoid delay.

20. Remarks: _____

* Facsimile request - information not required for blanket permit request.

MP 66 (Rev. 10-5-93) **General - Hauling Permit Application** Date _____

COMMONWEALTH OF VIRGINIA
 Department of Transportation
 Hauling Permit Section
 1221 East Broad Street, Richmond, Virginia 23219
 Phone (804) 786-2787

Designate Permit Type and Term Requested (Refer to Item 18 for selection)
 Term: Single Trip Blanket
 Type: _____

Office Use Only
 Permit No. _____
 Expiration Date: _____
 Fee: VDOT _____ DMV _____
 Authorized by: _____
 Received by: _____
 Title: _____

Name _____ State _____ Zip Code _____
 Address _____
 City _____ Federal Identification Number _____

Phone Number () _____ Wire Number () _____
 Transmission Co. _____

3. Item to be moved: _____
 * If single trip, indicate desired date of movement and method of transport: Pull Drive Tow Push
 Hazardous Commodity Yes No
 If answer is yes, state type _____

ROUTING

*4 From (Origin) _____
 *5 To (Destination) _____
 If origin or destination is within Virginia, exact location is required. Route of Origin, Destination and exact mileage from a definable location in Virginia must be shown. Example: Route 11, 2.5 miles North of Route 716 in Rockbridge County; Route 636, 1.5 miles North of Route 701 in Mecklenburg County.

*6 Preferred Routes of Travel _____

VEHICLE

7 Transport Vehicle Make and Model _____ Towing Capacity _____ Tons
 8 Transport Vehicle License No. _____ Trailer License No. _____
 9 What weight is vehicle licensed for? _____ What State? _____

SIZE REQUEST

10 Overall HEIGHT: Feet _____ Inches _____ WIDTH: Feet _____ Inches _____ LENGTH: Feet _____ Inches _____
 11 Does vehicle have a front overhang? Yes No
 If answer to the above is yes, please indicate overhang. Feet _____ Inches _____
 12 What is width of self-propelled truck crane measured from outside of tire to outside tire? Feet _____ Inches _____

WEIGHT REQUEST

13 Gross weight of vehicle or vehicle combination with load _____
 14 Number axles on vehicle or vehicle combination _____ wheel base, measure from center axle to rear center axle in Feet _____ Inches _____
 15 Axle Spacing _____
 Axles 1 to 2 _____ Wt. _____
 Axles 2 to 3 _____ Wt. _____
 Axles 3 to 4 _____ Wt. _____
 Axles 4 to 5 _____ Wt. _____
 Axles 5 to 6 _____ Wt. _____
 Axles 6 to 7 _____ Wt. _____
 Displacement _____
 Estimates _____

Mobile and Manufactured Housing - Only.
 *1.2. Serial No. of Mobile Home or Modular Unit _____

Facsimile Transmittal Sheet

Date: _____

11/09/93

Preliminary Review Request

DATE _____

To: _____

Fax Number: _____

PLEASE ALLOW (10) WORKING DAYS FOR PRELIMINARY REVIEW RESULTS.

Bond Information

Prior to the issuance of a Virginia Hauling Permit for the weight listed below; a cashiers check, letter of credit and/or a surety bond payable to the VA Dept. of Transportation must be posted in the following amounts:

Weight	Bond Amount	VA Dept. of Transportation Maintenance Div. - West Wing 1221 E. Broad St. Richmond, VA 23219 ATTN: Mr. Mike Alkhadra
150,100 to 200,000	\$100,000	
200,001 or more	\$200,000	

From: Virginia Department of Transportation
Hauling Permit Office - Superload Department
1221 East Broad Street
Richmond, VA 23219
Fax Number: (804) 786-5722
Voice Number: (804) 786-2787 #3

After receiving an approval of the Preliminary Review, an original copy of the bond must be on file at the address above and a Formal Hauling Permit Application must be faxed to (804)786-5722 prior to the issuance of a Hauling Permit. For further bond information contact Mr. Mike Alkhadra at (804)786-5082.

Re: Letter of Variance

To receive a Superload Permit to haul an item with a width in excess of 14'0" or an overall length in excess of 150'0", a letter from the shipper or manufacturer of the item should be mailed or faxed to this office including responses to the following questions in complete detailed statements:

- What is the item and what function does it perform?
- What makes the item irreducible?
- Why can't the item be shipped by air, rail or water?
- What are the overall dimensions and the gross weight of the item and the transport vehicle combined?
- What is the origin and destination specific to Virginia? (Be sure to include mileage specific intersecting routes.)
- What are the preferred routes of travel?
- Who can we contact if additional information is needed? (Please include a telephone number.)

Please be advised that only the information contained in the letter of variance submitted to this office will be used in the evaluation process. We ask that you please allow at least five days to receive the results of the evaluation process and the hauling permit if the variance is granted. The contact person listed on the letter of variance will be notified of the results of the evaluation process as soon as they are returned to the Superload Department.

Please contact us if we can be of further assistance to you.

Thank you

COMPANY NAME: _____ ADDRESS: _____ DATE OF MOVE: _____

CONTACT PERSON: _____ PHONE# _____

LOAD DIMENSIONS OVERALL DIMENSIONS COMMODITY:

WIDTH: _____

HEIGHT: _____

LENGTH: _____

GROSS WEIGHT: _____

FROM: _____

TO: _____

ROUTES: _____

TRAILER SERIAL# _____

GIVE PLACARD INFORMATION: _____ HAZARDOUS COMMODITY: YES() NO()
IF ANSWER IS YES STATE TYPE: _____

DIAGRAM OF RIG - SHOW AXLE SPACING & WEIGHT PER AXLE
(Please draw below or attach the diagram on a separate sheet)

MARINE RESOURCES COMMISSION

MARINE RESOURCES COMMISSION

NOTICE: The Marine Resources Commission is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia); however, it is required by § 9-6.14:22 B to publish all final regulations.

Title of Regulation: [~~VR 450-01-0034:1~~ 4 VAC 20-250-10 et seq.] Pertaining to the Taking of Striped Bass (REPEALED).

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: January 1, 1996.

Preamble:

The provisions of this regulation have been amended and readopted in 4 VAC 20-251-10 et seq. effective December 1, 1995. The effective date of this repeal is January 1, 1996.

Agency Contact: Deborah R. Cawthon, Marine Resources Commission, P.O. Box 756, Newport News, Virginia 23607-756, telephone (804) 247-2248.

Title of Regulation: 4 VAC 20-251-10 et seq. Pertaining to the Taking of Striped Bass.

Statutory Authority: § 28.2-201 of the Code of Virginia.

Effective Date: December 1, 1995.

Preamble:

This regulation establishes a limited commercial and recreational fishery for striped bass in Virginia for 1996. The provisions of this regulation are intended to comply with all federal and interstate requirements for fishing for striped bass. This regulation also authorizes the aquaculture of striped bass and hybrid striped bass and sets forth the conditions required for their culture.

This regulation is promulgated pursuant to the authority contained in § 28.2-201 of the Code of Virginia. The repeal of VR 450-01-0034:1, "Pertaining to the Taking of Striped Bass," which was promulgated on April 28, 1995, and became effective May 1, 1995, becomes effective January 1, 1996. The effective date of this regulation is December 1, 1995.

Agency Contact: Copies of the regulation may be obtained from Deborah R. Cawthon, Regulatory Coordinator, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607, telephone (804) 247-2248.

4 VAC 20-251-10 et seq. Pertaining to the Taking of Striped Bass.

CHAPTER 251.

PERTAINING TO THE TAKING OF STRIPED BASS.

PART I.

PURPOSE AND DEFINITIONS.

4 VAC 20-251-10. Purpose.

The purpose of this chapter is to provide for the continued sustained yield from the recovered striped bass stocks in Virginia and to limit the growth of the number of commercial participants in this fishery. The provisions pertaining to aquaculture serve to prevent the escape of cultured hybrid striped bass into the natural environment and to minimize the impact of cultured fish in the market place on the enforcement of other provisions of this chapter.

4 VAC 20-251-20. Definitions.

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

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area as defined by this section, and excluding the Potomac River tributaries as defined by this section.

"Coastal area" means the area that includes Virginia's portion of the Territorial Sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the Territorial Sea joins the mainland at Cape Henry).

"Commission" means the Marine Resources Commission.

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from license, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.

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2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.
3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.
4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 3 bridge at Fredericksburg.

"Striped Bass" means any fish of the species *Morone saxatilis*, including any hybrid of the species *Morone saxatilis*.

PART II. GENERAL PROVISIONS.

4 VAC 20-251-30. General prohibitions and requirements.

A. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, except in accord with the provisions of Title 28.2 of the Code of Virginia and in accord with the provisions of this chapter.

B. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, during a time, from an area, and with a gear type when there is no open season set forth in this chapter for such time, area, and gear type.

C. Except as provided in Part V (4 VAC 20-251-170 et seq.) of this chapter, it shall be unlawful for any person to possess any striped bass less than 18 inches total length at any time.

D. It shall be unlawful for any person to possess any striped bass that measures less than the minimum size or more than the maximum size applicable to the open season when fishing occurs.

E. Total length measurement of striped bass shall be in a straight line from tip of nose to tip of tail.

F. It shall be unlawful for any person while aboard any boat or vessel or while fishing from shore or pier to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

G. It shall be unlawful for any person to spear or gaff, or attempt to spear or gaff any striped bass at any time.

H. It shall be unlawful for any person to use a commercial hook-and-line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.

I. Unless specified differently in other regulations, it shall be unlawful to place, set, or fish any gill net within 300 feet of any bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.

J. During the period April 1 through May 31, inclusive, it shall be unlawful for any person to set or fish any anchored

gill net or staked gill net, for any purpose, within the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers. Drift or float gill nets may be set and fished within the spawning reaches of these rivers during this period, provided that the person setting and fishing the net remains with the net during the time it is fishing and all striped bass that are caught shall be returned to the water immediately.

K. Holding any permit issued by the commission to fish for striped bass, recreationally or commercially, shall authorize any commission personnel or their designees to inspect, measure, weigh, or take biological samples from any striped bass in possession of the permit holder.

4 VAC 20-251-40. Severability.

Any provision of this chapter that is held invalid by a court of competent jurisdiction shall not affect the validity of other provisions of this chapter which can be given effect without the invalid provision.

PART III. CONCERNING RECREATIONAL FISHING.

4 VAC 20-251-50. General.

A. It shall be unlawful for any person fishing recreationally to take or to catch striped bass with any gear other than hook and line, rod and reel, or hand line.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area and at a time where there is no open recreational striped bass season. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess striped bass in excess of the possession limit applicable for the area and season being fished. Striped bass taken in excess of the possession limit shall be returned to the water immediately.

When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area and season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade, or barter any striped bass taken by hook and line, rod and reel, or hand line provided, however, this provision shall not apply to persons possessing a commercial hook-and-line

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license with a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook-and-line, rod-and-reel, or hand line fishermen for hire unless the captain has obtained a permit from the commission and is the holder of a Coast Guard charter license.

I. Charter boat captains shall report to the commission, on forms provided by the commission, all daily quantities of striped bass caught and harvested, and daily fishing hours for themselves or their customers, respectively. The written report shall be forwarded to the commission no later than 15 days following the last day of any open season. In addition, charter boat captains engaging in the Bay and Coastal Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Trophy-size Striped Bass Recreational Fishery shall provide the report required by 4 VAC 20-251-60 and 4 VAC 20-251-70, respectively. Failure to provide these reports is a violation of this chapter.

4 VAC 20-251-60. Bay and coastal trophy-size striped bass recreational fishery.

A. The open season for this fishery shall be May 1 through May 15, inclusive; provided, however, the season may be adjusted as set forth in subsection E of this section.

B. The area open for this fishery shall be the coastal area and the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The minimum size limit for this fishery shall be 32 inches total length.

D. The possession limit for this fishery shall be one fish per person.

E. This fishery, combined with the fishery defined by 4 VAC 20-251-70, shall have a target take of 25,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and the Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.

F. Persons engaging in this fishery shall report the retention of any striped bass to the commission. Filing the report shall be the responsibility of the person retaining the striped bass, or, in the case of any charter boat or vessel, the captain of the charter boat or vessel. These reports are due 15 days after the close of this fishery and shall be on forms provided by the commission. There will be separate forms for persons and for charter boats or vessels.

4 VAC 20-251-70. Potomac River tributaries trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries trophy-size striped bass recreational fishery shall correspond

to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River trophy-size fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall be 32 inches total length.

D. The possession limit for this fishery shall be one fish per person.

E. This fishery, combined with the fishery defined by 4 VAC 20-251-60 shall have a target take of 25,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.

F. Persons engaging in this fishery shall report the retention of any striped bass to the commission. Filing the report shall be the responsibility of the person retaining the striped bass, or, in the case of any charter boat or vessel, the captain of the charter boat or vessel. These reports are due 15 days after the close of this fishery and shall be on forms provided by the commission. There will be separate forms for persons and for charter boats or vessels.

4 VAC 20-251-80. Bay Spring striped bass recreational fishery.

A. The open season for Bay Spring striped bass recreational fishery shall be May 16 through June 15, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length, and the maximum size limit for this fishery shall be 28 inches total length.

D. The possession limit for this fishery shall be two fish per person.

4 VAC 20-251-90. Bay Fall striped bass recreational fishery.

A. The open season for the Bay Fall striped bass recreational fishery shall be October 17 through December 31, inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 18 inches total length.

D. The possession limit for this fishery shall be two fish per person.

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4 VAC 20-251-100. Potomac River tributaries fall striped bass recreational fishery.

A. The open season for the Potomac River tributaries fall striped bass fishery shall correspond to the open fall season as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

B. The area open for this fishery shall be the Potomac River tributaries.

C. The minimum size limit for this fishery shall be 18 total length.

D. The possession limit for this fishery shall be two fish per person.

4 VAC 20-251-110. Coastal striped bass recreational fishery.

A. The open seasons for the coastal striped bass recreational fishery shall be January 1 through March 31 and May 16 through December 31, inclusive.

B. The area open for this fishery shall be the coastal area as defined in this chapter.

C. The minimum size limit for this fishery shall be 28 total length.

D. The possession limit for this fishery shall be two fish per person.

PART IV. CONCERNING COMMERCIAL FISHING.

4 VAC 20-251-120. General.

A. It shall be unlawful for any person to engage in the commercial fishery for striped bass without first having the necessary commercial fisherman's registration and appropriate gear license as required by Title 28.2 of the Code of Virginia, and the special permit to fish for striped bass established in 4 VAC 20-251-130.

B. It shall be unlawful for any person fishing commercially to harvest striped bass by any method other than gill net, pound net, haul seine, fyke net, or commercial hook and line. The harvest of striped bass by any person using any of these gear is presumed to be a commercial harvest.

C. It shall be unlawful for any person fishing commercially to possess any striped bass taken outside any open commercial season or area, with gear inapplicable to the season and area, as specified in 4 VAC 20-251-140. Any striped bass caught contrary to this provision shall be returned to the water immediately.

D. It shall be unlawful for any person while actively fishing pursuant to a commercial fishery to possess any striped bass that is less than the minimum size limit applicable for the area and season then open and being fished. Any striped bass caught that does not meet the applicable minimum size limit shall be returned to the water immediately.

E. All striped bass in the possession of any person for the purpose of sale must be identified with a tamper evident sealed tag that has been approved and issued by the appropriate authority in the jurisdiction of capture. Whole striped bass shall have tags attached directly to the fish.

Processed or filleted striped bass must be accompanied by the tags removed from the fish when processed.

F. When the striped bass are in the possession of any person, other than the original harvester, for the purpose of resale, the striped bass shall be accompanied by a bill of sale which shall include the name of the seller, the permit or license number of the seller if such permit or license is required in the jurisdiction of harvest, the date of sale, the pounds of striped bass in possession, the location of catch and the gear type used to harvest the striped bass. If the striped bass product for sale is fillets, the bill of sale shall also specify the number of fillets.

4 VAC 20-251-130. Entry limits, permits, and reports.

A. There is established a special permit for engaging in the commercial fishery for striped bass, and it shall be unlawful for any person to engage in the commercial fishery for striped bass without first having obtained the permit from the commission. This permit will be for a specific gear, and it shall be unlawful for any person to engage in the commercial fishery for striped bass with any gear not so permitted, except that commercial hook-and-line may be used by any permittee.

Permits will be issued in number and manner as set forth in subdivisions B 1 and B 2 of this section.

To be qualified to receive a permit, the applicant must meet the conditions of subdivisions 1, 2, 3, and 4 of this subsection, and the conditions of either subdivision 5 a or b of this subsection. An applicant meeting the conditions of subdivisions 1, 2, 3, 4, and 5 a of this subsection shall be considered a priority applicant and qualified for a permit for specific gear as set forth in subdivision B 2 a of this section.

1. Applicants shall apply for permits by January 1, 1996, to be eligible to fish during the commercial season beginning January 15, 1996. Applicants not in accord with this time period will not be accepted.

Completed permit applications and supporting documents may be hand delivered or mailed to the Marine Resources Commission, 2600 Washington Avenue, P.O. Box 756, Newport News, Virginia 23607. Complete applications must be received at this main office address of the commission no later than 5 p.m. on the last day of the application period.

2. Applicants shall apply only for a permit for and use only a single type of commercial gear during 1996 and will be restricted to that gear type in future years, except that commercial hook-and-line may be used by any permittee.

3. Applicants shall have a valid 1996 commercial fisherman's registration. Applicants must provide a copy of a valid gear license as required by Title 28.2 of the Code of Virginia, corresponding to the type of gear being applied for, at the time of application for the permit.

4. Applicants shall have reported all prior fishing activity in accordance with 4 VAC 20-610-10 such that the applicant is not under any sanction by the commission for noncompliance.

5. Applicants shall meet either of the following conditions:

a. Applicants shall have held a valid striped bass commercial gear permit for 1995. Applicants meeting this condition and all prior listed conditions (subdivisions 1 through 5 of this subsection) shall be considered priority applicants.

b. Applicants shall have held a valid commercial fishing gear license for 1994 or 1995 for the gear for which application is being made for this permit.

6. The commission may grant exceptions to the limited entry conditions listed above based on hardship. Any person requesting an exception shall provide in writing an explanation of their hardship and all pertinent information relating to these conditions and the hardship. All requests for exceptions must be received at the commission by December 15, 1995.

B. 1. There shall be a limited number of permits for specific gear available for the commercial fishery for striped bass for 1996 and beyond. Subject to the provisions of subdivision 2 a of this subsection, the maximum number of permits for each specific gear shall be as follows:

a. For gill nets	379
b. For pound nets	57
c. For haul seines	10
d. For fyke nets	7
e. For commercial hook and line	39

2. Permits shall be granted by the commission in the following manner and the maximum number of permits for a gear may be increased if necessary to comply with this manner.

a. A qualified priority applicant (meets the conditions of subdivisions A 1, 2, 3, 4, and 5 a of this section) for a permit for any gear shall be granted a permit for that gear. If the number of qualified priority applicants for a gear exceeds the maximum number of permits available for that gear then the maximum number of permits for that gear shall be increased to equal the number of qualified priority applicants, thus assuring that all qualified priority applicants receive a permit for the gear applied for.

b. In the event the number of qualified priority applicants for any gear take the maximum number of permits available for that gear, then all other qualified applicants (meets the conditions of subdivisions A 1, 2, 3, 4 and 5 b of this section) from the 1995 waiting list shall be placed, using their relative ranked order, on the 1996 waiting list. Additional qualified applicants for the 1996 fishing year shall be placed by lottery on the 1996 waiting list in rank order following those qualified applicants from the 1995 waiting list. The 1996 waiting list shall be used to grant any permits in subsequent years, provided the applicant remains qualified.

c. In the event the number of qualified priority applicants for any gear do not take the maximum number of permits available for that gear, then the number of permits not taken for that gear shall be available to other qualified applicants in order of their rank on the 1996 waiting list for that gear.

C. It shall be unlawful for any person to purchase striped bass taken from Virginia's tidal waters for the purpose of resale without first obtaining a permit from the commission.

D. Permits must be in the possession of the permittee while harvesting, selling or possessing striped bass. Failure to have the appropriate permit in possession shall be a violation of this chapter.

E. All commercial harvesters of striped bass shall report to the commission in accordance with 4 VAC 20-610-10.

F. All buyers of striped bass taken from Virginia's tidal waters shall provide written reports of daily purchases and sales for each commercial fishing season to the commission no later than 15 days following the last day of each commercial fishing season.

G. Failure of any person permitted to harvest, buy, or sell striped bass, to submit the required written report for any fishing day shall constitute a violation of this chapter.

4 VAC 20-251-140. Commercial seasons, areas, and size limits.

Except as may be adjusted pursuant to 4 VAC 20-251-150, the open commercial striped bass fishing seasons, areas, and applicable size limits, by gear, shall be as follows:

1. In the Chesapeake Bay and its tributaries and the Potomac River tributaries, the open commercial season for pound net, gill net, haul seine, fyke net, and commercial hook and line shall be from January 15 through December 31, inclusive, and the minimum size limit shall be 18 inches total length.

2. In the coastal area, the open commercial season for pound net, gill net, haul seine, fyke net, and commercial hook and line shall be January 15 through December 31, inclusive, and the minimum size limit shall be 28 inches total length.

4 VAC 20-251-150. Commercial harvest quota.

A. All harvests of striped bass by gill net, pound net, haul seine, fyke net, and commercial hook and line shall be used in arriving at the total allowable level of commercial harvest.

B. The total allowable level of all commercial harvest of striped bass for all open seasons and for all legal gear shall be 1,384,000 pounds of whole fish. At such time as the total harvest of striped bass is projected to reach 1,384,000 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes. Such cessation of landing and possession of striped bass shall apply to all gears, even in the event some specific gear quotas may not have been reached. At such time as the harvest by any specific gear is projected to reach the total allowable level of commercial striped bass harvest for that gear, as set forth in subsections C, D, E, F, and G of this section, and announced as such, it shall be unlawful for

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any person to land or possess striped bass caught by that gear.

C. The total allowable level of commercial striped bass harvest by gill net shall be 68.6% of the total allowable sum of pounds of whole fish set forth in subsection B of this section.

D. The total allowable level of commercial striped bass harvest by pound net shall be 24.5% of the total allowable sum of pounds of whole fish set forth in subsection B of this section.

E. The total allowable level of commercial striped bass harvest by haul seine shall be 2.94% of the total allowable sum of pounds of whole fish set forth in subsection B of this section.

F. The total allowable level of commercial striped bass harvest by fyke net shall be 1.96% of the total allowable sum of pounds of whole fish set forth in subsection B of this section.

G. The total allowable level of commercial striped bass harvest by hook and line shall be 2.0% of the total allowable sum of pounds of whole fish set forth in subsection B of this section.

4 VAC 20-251-160. Individual commercial catch limits and tagging.

A. At the place of capture, and as soon as possible after capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

B. It shall be unlawful to bring to shore any commercially caught striped bass that has not been marked by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession.

C. For each of the commercial gear types, gill net, pound net, haul seine, fyke net, and commercial hook and line, the commission will issue tags equally to persons permitted as described in 4 VAC 20-251-130, according to the available quotas set forth in 4 VAC 20-251-150, and converted to number of fish based on the estimated gear-specific average weight of the striped bass caught.

D. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. It shall be unlawful for any permittee to transfer any tag to another person. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied.

E. Altering or attempting to alter any tag for the purpose of re-use shall constitute a violation of this chapter.

F. Any tags issued and not used shall be returned to the commission by the permittee within 15 days after the close of the commercial fishery for the year.

PART V. AQUACULTURE OF STRIPED BASS AND HYBRID STRIPED BASS.

4 VAC 20-251-170. Permit required.

A. It shall be unlawful for any person to operate a striped bass aquaculture facility without first obtaining a permit from the commission. Such permit shall authorize and define the limits of activities concerning the purchase, possession, sale, giving, receiving, and transportation of striped bass or hybrid striped bass in accordance with the other rules contained in this chapter.

B. The application for a striped bass aquaculture facility shall state the name and address of the applicant, the type and location of the facility, type of water supply, location of nearest tidal waters or tributaries to tidal water, and an estimate of production capacity. All aquaculture permits shall expire on December 31 of the year of issue and are not transferable. Permits shall be automatically renewed by the commission provided no structural changes in the facility have been made, the facility has been adequately maintained, and the permittee has complied with all of the provisions of this chapter.

C. The original of each permit shall be maintained and prominently displayed at the aquaculture facility described therein. A copy of such permit may be used as evidence of authorization to transport striped bass or hybrid striped bass to sell the fish away from the permitted facility under the conditions imposed in 4 VAC 20-251-210.

4 VAC 20-251-180. Water supply; outfall; prevention of entry and escapement.

A. A striped bass or hybrid striped bass aquaculture facility may consist of one or more ponds, artificial impoundments, closed recirculating systems or a combination of the above.

B. No pond or impoundment used for striped bass or hybrid striped bass aquaculture may be constructed or situated on a natural water course that originates beyond the boundaries of private land upon which the pond or impoundment is located.

C. There shall be no direct and unscreened discharge from any facility to any natural watercourse. Except as provided in subsection D of this section, outfall from any pond or impoundment shall be processed according to one of the following systems:

1. The outfall shall pass over a dry ground percolation system in which ground absorption of the water is sufficient to prevent the formation of a watercourse which is capable of reaching any natural watercourse. The outfall shall pass through a screened filter box prior to entering the percolation area.

2. The outfall shall pass through a chlorination process and retention pond for dechlorination. The outfall shall pass through a filter box prior to entering the chlorination system.

3. Such facilities must also comply with regulations of the State Water Control Board.

D. If the outfall from an aquaculture facility may not conform to the systems described in subdivision C 1 or C 2 of this section then all of the following conditions shall be required:

1. The aquaculture of striped bass or hybrid striped bass shall be restricted to the use of cage culture. Such cages shall be constructed of a vinyl coated wire or high density polyethylene mesh material sufficient in size to retain the fish and all cages must be securely anchored to prevent capsizing. Covers shall be required on all cages.
2. The outfall from the pond or impoundment shall pass through a screened filter box. Such filter box shall be constructed of a mesh material sufficient in size to retain the fish and shall be maintained free of debris and in workable condition at all times, and
3. The outfall from the screened filter box shall pass into a containment basin lined and filled with quarry rock or other suitable material to prevent the escapement of the fish from the basin.

E. Those facilities utilizing embankment ponds shall maintain sufficient freeboard above the spillway to prevent overflow.

4 VAC 20-251-190. Acquisition of fish, fingerlings, fry, and eggs.

Striped bass or hybrid striped bass fingerlings, fry, or eggs, may be obtained only from state permitted fish dealers and must be certified by the seller as striped bass or hybrid striped bass having a disease free status. Each purchase or acquisition of striped bass or hybrid striped bass must be accompanied by a receipt or other written evidence showing the date, source, species, quantity of the acquisition and its destination. Such receipt must be in the possession of the permittee prior to transportation of such fish, fingerlings, fry, or eggs to the permitted facility. All such receipts shall be retained as part of the permittee's records. The harvesting of striped bass from the tidal waters of Virginia for the purpose of artificially spawning in a permitted aquaculture facility shall comply with all of the provisions of this chapter and state law including minimum size limits, maximum size limits, and closed harvesting seasons and areas.

4 VAC 20-251-200. Inspection of facilities; diseased fish.

A. Inspections. Agents of the commission and the Department of Game and Inland Fisheries are authorized to make periodic inspection of the facilities and the stock of each operation permitted under this section. Every person engaged in the business of striped bass aquaculture shall permit such inspection at any reasonable time.

B. Diseased fish. No person permitted under regulation shall maintain in the permitted facility any fish which shows evidence of any contagious disease listed in the then current list by the United States Fish and Wildlife Service as "certifiable diseases" except for the period required for application of standard treatment procedures or for approved disposition.

C. Disposition. No person permitted under this chapter shall sell or otherwise transfer possession of any striped bass or hybrid striped bass which show evidence of a "certifiable disease" to any person, except that such transfer may be made to a fish pathologist for examination and diagnosis.

4 VAC 20-251-210. Sale, records, importation, release.

A. All striped bass or hybrid striped bass except fingerlings, fry, and eggs, which are the product of an aquaculture facility permitted under this section shall be packaged with a printed label bearing the name, address, and permit number of the aquaculture facility. When so packaged and labeled such fish may be transported and sold at retail or at wholesale for commercial distribution through normal channels of trade until reaching the ultimate consumer. Every such sale must be accompanied by a receipt showing the date of sale, the name, address and permit number of the aquaculture facility, the numbers and species of fish sold, and the name of the purchaser. Each subsequent resale must be accompanied by a receipt clearly identifying the seller by name and address, showing the number and species of the fish sold, the date sold, the permit number of the aquaculture facility and, if the sale is to other than the ultimate consumer, the name and address of the purchaser. The purchaser in possession of such fish must exhibit the receipt on demand of any law-enforcement officer. A duplicate copy of each such receipt must be retained for one year by the seller as part of the records of each transaction.

B. Each permitted aquaculture facility operator shall maintain a chronological file of the receipts or copies thereof showing the dates and sources of acquisitions of striped bass or hybrid striped bass and quantities thereof, and a chronological file of copies of receipts of his sales required under subsection A of this section. Such records shall be segregated as to each permit year, shall be made available for inspection by any authorized agent of the commission or Department of Game and Inland Fisheries, and shall be retained for at least one year following the close of the permit year to which they pertain.

C. Striped bass or hybrid striped bass which are the product of an approved and state permitted aquaculture facility in another state may be imported into Virginia for the consumer market. Such fish shall be packaged and labeled in accordance with the provisions contained in subsection A of this section. Any sale of such fish also shall be accompanied by receipts as described in subsection A of this section.

D. Under no circumstance shall striped bass which are the product of an aquaculture facility located within or outside the Commonwealth of Virginia be placed into the waters of the Commonwealth without first having notified the commission and having received written permission from the Commissioner of Marine Resources.

Marine Resources Commission

PART VI.
PENALTIES AND SANCTIONS.

4 VAC 20-251-220. *Penalty.*

As set forth in § 28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

4 VAC 20-251-230. *Sanctions.*

A. Any person failing to submit any report required by this chapter shall be denied a striped bass permit for the following year.

B. Any person found guilty of violating any provision of this chapter may have their permit or license revoked at any time upon review by the commission as provided for in § 28.2-232 of the Code of Virginia.

If the commission revokes any person's permit for an aquaculture facility under Part V (4 VAC 20-251-170 et seq.) of this chapter, then that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

VA.R. Doc. No. R96-143; Filed December 6, 1995, 1:07 p.m.

GOVERNOR

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

(Required by § 9-6.12:9.1 of the Code of Virginia)

DEPARTMENT OF TAXATION

Title of Regulation: VR 630-3-439 [23 VAC 10-120-291 through 23 VAC 10-120-299.] Major Business Facility Job Tax Credit.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: September 27, 1995

VA.R. Doc. No. R96-126; Filed December 1, 1995, 12:45 p.m.

STATE WATER CONTROL BOARD

Title of Regulation: VR 680-14-10 [9 VAC 25-115-10 et seq.] General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities.

Governor's Comment:

I have reviewed this proposed regulation on a preliminary basis. While I reserve the right to take action authorized by the Administrative Process Act during the final adoption period, I have no objection to the proposed regulation based on the information and public comment currently available.

/s/ George Allen
Governor

Date: October 4, 1995

VA.R. Doc. No. R96-126; Filed December 1, 1995, 12:45 p.m.

SCHEDULES FOR COMPREHENSIVE REVIEW OF REGULATIONS

Governor George Allen issued and made effective Executive Order Number Fifteen (94) on June 21, 1994. This Executive Order was published in *The Virginia Register of Regulations* on July 11, 1994 (10:21 VA.R. 5457-5461 July 11, 1994). The Executive Order directs state agencies to conduct a comprehensive review of all existing regulations to be completed by January 1, 1997, and requires a schedule for the review of regulations to be developed by the agency and published in *The Virginia Register of Regulations*. This section of the *Virginia Register* has been reserved for the publication of agencies' review schedules. Agencies will receive public comment on the following regulations listed for review.

REAL ESTATE BOARD

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the regulations of the Real Estate Board. As a part of this process public input and comments are being solicited; comments may be provided until February 24, 1996, to Emily O. Wingfield, Acting Assistant Director, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. The department's goal in accordance with the Executive Order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are clearly written so that they may be used and implemented by all those who interact with the regulatory process.

Regulations:

VR 585-01-0:1. Real Estate Board Public Participation Guidelines.

VR 585-01-1. Real Estate Board Regulations.

A public hearing on the regulations will be held on January 17, 1996, at 3 p.m., at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until February 24, 1996, to Emily O. Wingfield, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact Emily O. Wingfield, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8552.

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the Real Estate Time-Share Regulations of the Real Estate Board. As a part of this process public input and comments are being solicited; comments may be provided until February 24, 1996, to Pratt Stelly, Legal Assistant, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. The department's goal in accordance with the Executive Order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are clearly written so that they may be

used and implemented by all those who interact with the regulatory process.

Regulations:

VR 585-01-3. Real Estate Time-Share Regulations.

A public hearing on the regulation will be held on January 17, 1996, at 1 p.m., at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until February 24, 1996, to Pratt Stelly, Legal Assistant, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact Pratt Stelly, Legal Assistant, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8510.

The Department of Professional and Occupational Regulation, pursuant to Executive Order Number Fifteen (94), is proposing to undertake a comprehensive review of the Fair Housing Regulations of the Real Estate Board. As a part of this process public input and comments are being solicited; comments may be provided until February 24, 1996, to John Cancelleri, Fair Housing Administrator, at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230. The department's goal in accordance with the Executive Order is to ensure that the regulations achieve the least possible interference in private enterprise while still protecting the public health, safety and welfare and are clearly written so that they may be used and implemented by all those who interact with the regulatory process.

Regulations:

VR 585-01-5. Fair Housing Regulations.

A public hearing on the regulation will be held on January 17, 1996, at 1 p.m., at 3600 West Broad Street, Richmond, Virginia 23230.

Public comments may be submitted until February 24, 1996, to John Cancelleri, Fair Housing Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230.

For additional information contact John Cancelleri, Fair Housing Administrator, Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia 23230, telephone (804) 367-8530.

GENERAL NOTICES/ERRATA

Symbol Key

† Indicates entries since last publication of the *Virginia Register*

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Our mailing address is: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219. You may FAX in your notice; however, we ask that you FAX two copies and do not follow up with a mailed copy. Our FAX number is: (804) 692-0625.

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 OBJECTIONS -
RR08

ERRATA

DEPARTMENT OF TAXATION

Title of Regulation: 23 VAC 10-120-291 et seq. Major Business Facility Job Tax Credit.

Publication: 12:5 VA.R. 743-753 November 27, 1995.

Correction to Proposed Regulation:

Page 752, 23 VAC 10-120-296, column 1, under heading "1998 Recapture:" change "Total credit allowed" to "Recapture"

CALENDAR OF EVENTS

Symbol 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

Contact: Roy E. Seward, Secretary to the Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 211, Richmond, VA 23219, telephone (804) 786-3535 or (804) 371-6344/TDD☎

BOARD FOR ACCOUNTANCY

January 22, 1996 - 10 a.m. -- Open Meeting

January 23, 1996 - 8 a.m. -- Open Meeting

Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia.♿
(Interpreter for the deaf provided upon request)

An open meeting to discuss regulatory review and other matters requiring board action. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Board for Accountancy, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD☎

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

† **January 10, 1996 - Noon** -- Open Meeting

Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia.♿

A regular meeting of the board to 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 accommodations in order to participate at the meeting should contact Roy E. Seward at least five days before the meeting date so that suitable arrangements can be made.

Virginia Horse Industry Board

January 19, 1996 - 1 p.m. -- Open Meeting

Embassy Suites Hotel, 2925 Emerywood Parkway, 1st Floor, Richmond, Virginia.♿

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 accommodations in order to participate at the meeting should contact Andrea S. Heid at least five days before the meeting date so that suitable arrangements can be made.

Contact: Andrea S. Heid, Equine Marketing Specialist, Department of Agriculture and Consumer Services, 1100 Bank St., Room 906, Richmond, VA 23219, telephone (804) 786-5842 or (804) 371-6344/TDD☎

Pesticide Control Board

† **January 11, 1996 - 9 a.m.** -- Open Meeting

Council on Information Management, Washington Building, 1100 Bank Street, 9th Floor Board Room, Richmond, Virginia.♿

Committee meetings and a general business meeting. Portions of the meeting may be held in closed session pursuant to § 2.1-344 of the Code of Virginia. The public will have an opportunity to comment on any matter not on the board's agenda beginning at 9 a.m. Any person who needs any accommodations in order to participate at the meeting should contact Dr. Marvin A. Lawson at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Dr. Marvin A. Lawson, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, 1100 Bank St., Room 401, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6558.

ALCOHOLIC BEVERAGE CONTROL BOARD

January 8, 1996 - 9:30 a.m. -- Open Meeting
January 22, 1996 - 9:30 a.m. -- Open Meeting
February 5, 1996 - 9:30 a.m. -- Open Meeting
February 21, 1996 - 9:30 a.m. -- Open Meeting
Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports and activities from staff members. Other matters have not yet been determined.

Contact: W. Curtis Coleburn, Secretary to the Board, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., P.O. Box 27491, Richmond, VA 23261, telephone (804) 367-0712 or FAX (804) 367-1802.

STATE BOARD FOR COMMUNITY COLLEGES

† January 10, 1996 - 2:30 p.m. -- Open Meeting
† March 13, 1996 - 2:30 p.m. -- Open Meeting
Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

State board committee meetings.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

† January 11, 1996 - 8:30 a.m. -- Open Meeting
† March 14, 1996 - 8:30 a.m. -- Open Meeting
Monroe Building, 101 North 14th Street, 15th Floor, Richmond, Virginia.

A regularly scheduled board meeting.

Contact: Dr. Joy S. Graham, Assistant Chancellor, Public Affairs, State Board for Community Colleges, Monroe Bldg., 101 N. 14th St., 15th Floor, Richmond, VA 23219, telephone (804) 225-2126 or (804) 371-8504/TDD ☎

COMMONWEALTH COMPETITION COUNCIL

† January 8, 1996 - 10 a.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 3rd Floor West Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the council.

Contact: Peggy Robertson, Coordinator, Commonwealth Competition Council, P.O. Box 1475, Monroe Bldg., 101 N. 14th St., 18th Floor, Richmond, VA 23219, telephone (804) 786-0240 or FAX (804) 786-1594.

DEPARTMENT OF CONSERVATION AND RECREATION

Falls of the James Scenic River Advisory Board

† January 4, 1996 - Noon -- Open Meeting
† February 1, 1996 - Noon -- Open Meeting
City Hall, Planning Commission Conference Room, 5th Floor, Richmond, Virginia.

A meeting to review river issues and programs.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899 or (804) 786-2121/TDD ☎

BOARD FOR CONTRACTORS

† January 10, 1996 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A regularly scheduled quarterly meeting of the board which will address policy and procedural issues; review and render decisions on applications for contractor licenses/certificates; and review and render case decisions on matured complaints against licensees/certificants. 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 the department. The department fully complies with the Americans with Disabilities Act. Please notify the department of your request at least two weeks in advance.

Contact: Gerald W. Morgan, Senior Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2785.

BOARD OF CORRECTIONS

† January 17, 1996 - 10 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

A meeting to discuss matters which may be presented to the board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Administration Committee

† January 17, 1996 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☎

Calendar of Events

A meeting to discuss administrative matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

Correctional Services Committee

† **January 16, 1996 - 10 a.m.** -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Board Room, Richmond, Virginia. ☞

A meeting to discuss correctional services matters which may be presented to the full board.

Contact: Barbara Fellows, Secretary to the Board, Department of Corrections, 6900 Atmore Dr., Richmond, VA 23225, telephone (804) 674-3235 or FAX (804) 674-3130.

BOARD FOR COSMETOLOGY

January 15, 1996 - 10 a.m. -- CANCELLED
January 22, 1996 - 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 at least two weeks in advance.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD ☞

BOARD OF DENTISTRY

January 19, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☞
(Interpreter for the deaf provided upon request)

A full board meeting to conduct regular board business and to review reports from the following committees: legislative/regulatory, continuing education, examination, advertising and budget. This is a public meeting and public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☞

Advertising Committee

† **January 18, 1996 - 3 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☞
(Interpreter for the deaf provided upon request)

A meeting to discuss advertising issues. This is a public meeting, however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☞

Examination Committee

† **January 18, 1996 - 4 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☞
(Interpreter for the deaf provided upon request)

A meeting to discuss examination issues. This is a public meeting, however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☞

Continuing Education Committee

January 17, 1996 - 4 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)

A regular meeting. A 20-minute public comment period will be held beginning at 4 p.m.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☞

Endorsement Committee

† **January 18, 1996 - 8 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia. ☞
(Interpreter for the deaf provided upon request)

An Endorsement Committee meeting for dental endorsement to discuss the status of endorsement, and for dental hygiene to discuss the guidelines for dental hygiene endorsement. This is a public meeting, however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☞

January 18, 1996 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Conference Room 4, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct formal hearings. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD

BOARD OF EDUCATION

† **January 18, 1996 - 9 a.m.** -- Open Meeting
† **February 22, 1996 - 9 a.m.** -- Open Meeting
Monroe Building, 101 North 14th Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The Board of Education and the Board of Vocational Education will hold its regularly scheduled meeting. Business will be conducted according to items listed on the agenda. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant to the Superintendent for Board Activities, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540 or toll-free 1-800-292-3820.

STATE BOARD OF ELECTIONS

† **January 4, 1996 - 10 a.m.** -- Open Meeting
State Capitol, Capitol Square, House Room One, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regularly scheduled board meeting.

Contact: M. Bruce Meadows, Secretary, State Board of Elections, 200 North 9th St., Room 101, Richmond, VA 23219, telephone (804) 786-6551, FAX (804) 371-0194, toll-free 1-800-552-9745 or 1-800-260-3466/TDD

LOCAL EMERGENCY PLANNING COMMITTEE - ARLINGTON COUNTY/CITY OF FALLS CHURCH/WASHINGTON NATIONAL AIRPORT

† **January 9, 1996 - 5:30 p.m.** -- Open Meeting
Arlington County Fire Station #1, 500 South Glebe Road, Arlington, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the planning committee to conduct general business. For more information contact Captain Michael Kilby.

Contact: Captain Michael Kilby, Arlington County Hazardous Materials Coordinator, 1020 N. Hudson St., Arlington, VA 22201, telephone (703) 358-4652, (703) 358-4644 or (703) 358-4610/TDD

LOCAL EMERGENCY PLANNING COMMITTEE - GLOUCESTER COUNTY

† **January 24, 1996 - 6:30 p.m.** -- Open Meeting
Gloucester County Administration Office, Conference Room, Gloucester, Virginia. (Interpreter for the deaf provided upon request)

The annual organizational meeting of the committee will include election of officers, adoption of rules of procedure for the year and initial discussion of the annual exercise.

Contact: Georgette N. Hurley, Assistant County Administrator, Gloucester County, P.O. Box 329, Gloucester, VA 23061, telephone (804) 693-4042 or (804) 693-1479/TDD

DEPARTMENT OF ENVIRONMENTAL QUALITY

† **January 9, 1996 - 7 p.m.** -- Open Meeting
The Fire House, New Church, Virginia.

A meeting to allow public comment on the request for a permit to construct and operate three 132.5 NW simple cycle combustion turbines firing 62,335,990 gallons per year of No. 2 oil combined, from Commonwealth Chesapeake Corporation (CCC), 1.2 kilometers south of the Maryland state line, Accomack County near New Church, Virginia.

Contact: Jane A. Workman or Sally Gullapalli, Department of Environmental Quality, Air Division, Tidewater Regional Office, Old Greenbrier Village, 2010 Old Greenbrier Rd., Suite A, Chesapeake, VA 23320-2168, telephone (804) 424-6707.

Technical Advisory Committee for Solid Waste Management Regulations

January 12, 1996 - 10 a.m. -- Open Meeting
February 2, 1996 - 10 a.m. -- Open Meeting
February 23, 1996 - 10 a.m. -- Open Meeting
Department of Environmental Quality, 629 East Main Street, First Floor Training Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss desirable amendments to the current Virginia Solid Waste Management Regulations (VR 672-20-10) [9 VAC 20-80-10 et seq.]

Contact: Dr. Wladimir Gulevich, Office of Technical Assistance, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240-0009, telephone (804) 762-4218, FAX (804) 762-4327 or (804) 762-4021/TDD

BOARD OF FORESTRY

† **January 10, 1996 - 1 p.m.** -- Open Meeting
Department of Forestry, 2229 East Nine Mile Road, Sandston, Virginia. (Interpreter for the deaf provided upon request)

Calendar of Events

A general business meeting. Any person requiring an interpreter for the deaf should notify the department at least five days prior to the meeting.

Contact: Barbara A. Worrell, Administrative Staff Specialist, P.O. Box 3758, Charlottesville, VA 22903-0758, telephone (804) 977-6555/TDD ☎

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

† **January 10, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 3, Richmond, Virginia. ☎

A general board meeting to discuss board business. Public comments will be received at the beginning of the meeting for 15 minutes. Formal hearings will follow and public comments will be received.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Examination Committee

† **January 11, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia. ☎

The committee will meet to discuss the next examination.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Legislative Committee

† **January 11, 1996 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, Conference Room 1, Richmond, Virginia. ☎

The committee will meet to discuss surface transportation and removal services.

Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9907, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF GAME AND INLAND FISHERIES

NOTE: REVISED NOTICE

January 9, 1996 - 10 a.m. -- Open Meeting
Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The board will meet and review a study on management of the agency's fish hatcheries and will address issues

related to fox pens. In addition, general and administrative matters may be discussed. The board may hold an executive session.

Contact: Phil Smith, Policy Analyst Senior, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

DEPARTMENT OF HEALTH (STATE BOARD OF)

† **January 11, 1996 - 10 a.m.** -- Open Meeting
Madison Building, 109 Governor Street, First Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A worksession, followed by an informal dinner at the Radisson Hotel.

Contact: Paul W. Matthias, Staff to the Board of Health, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

† **January 12, 1996 - 9 a.m.** -- Open Meeting
Madison Building, 109 Governor Street, First Floor Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular business meeting.

Contact: Paul W. Matthias, Staff to the Board of Health, Department of Health, 1500 E. Main St., Suite 214, Richmond, VA 23219, telephone (804) 786-3564.

Biosolids Use Information Committee

† **January 4, 1996 - Noon** -- Open Meeting
UVA Richmond Center, 7740 Shradler Road, Suite E, Richmond, Virginia. ☎

A meeting immediately following the Regulations Advisory Committee meeting (beginning at 9 a.m.) to evaluate specific concerns relating to the land application and agricultural use of biosolids, including issues related to the final Biosolids Use Regulations recently adopted by the State Board of Health to regulate the land application, marketing, or distribution of biosolids.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 786-5567.

Biosolids Use Regulations Advisory Committee

† **January 4, 1996 - 9 a.m.** -- Open Meeting
UVA Richmond Center, 7740 Shradler Road, Suite E, Richmond, Virginia. ☎

A meeting to discuss issues concerning the implementation of the Biosolids Use Regulations involving land application, distribution, or marketing of biosolids.

Contact: C. M. Sawyer, Director, Division of Wastewater Engineering, Department of Health, Office of Water Programs, P.O. Box 2448, Richmond, VA 23218, telephone (804) 786-1755 or FAX (804) 371-2891.

BOARD OF HEALTH PROFESSIONS

† **January 16, 1996 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A full board meeting with agenda items to include: (i) reports from committees including levels of regulation, regulatory research, and practitioner self-referral; (ii) consideration of a study on disclosure of information in disciplinary cases; and (iii) new committee assignments for 1996-97. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD

Ad Hoc Levels of Regulations Committee

† **January 16, 1996 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to continue work on issues related to barriers to health care delivery. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD

Practitioner Self-Referral Committee

† **January 16, 1996 - 11 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting of the committee to receive public comment on Practitioner Self-Referral Regulations 18 VAC 75-20-10 et seq. (VR 365-01-2) pursuant to Executive Order 15(94), which requires a comprehensive review of all regulations. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD

Regulatory Research Committee

† **January 16, 1996 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The committee will consider comments in response to its Notice of Intended Regulatory Action on issuing regulations for use of titles of "dietitian" or "nutritionist." It may also receive reports on ongoing studies and consider work plans for new activities. Public comment will be received at the beginning of the meeting.

Contact: Carol Stamey, Administrative Assistant, Board of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9910, FAX (804) 662-9943 or (804) 662-7197/TDD

VIRGINIA HEALTH SERVICES COST REVIEW COUNCIL

† **January 23, 1996 - 9:30 a.m.** -- Open Meeting
Trigon Blue Cross/Blue Shield, 2015 Staples Mill Road, Richmond, Virginia.

A monthly meeting of the council.

Contact: Richard L. Walker, Director of Administration, Virginia Health Services Cost Review Council, 805 E. Broad St., 6th Floor, Richmond, VA 23219, telephone (804) 786-6371.

BOARD FOR HEARING AID SPECIALISTS

January 8, 1996 - 9 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 the department at least 10 days prior to the meeting so that suitable arrangements can be made. The department fully complies with the Americans with Disabilities Act.

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-0500, FAX (804) 367-2475 or (804) 367-9753/TDD

VIRGINIA HIGHER EDUCATION TUITION TRUST FUND

† **January 8, 1996 - 1 p.m.** -- Open Meeting
Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, Virginia.

A regular meeting.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, Monroe Building, 101 N. 14th

Calendar of Events

St., 3rd Floor, Richmond, VA 23219, telephone (804) 371-6011.


STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

† **January 10, 1996 - 9 a.m.** -- Open Meeting
Monroe Building, 101 North 14th Street, 9th Floor, Council Conference Room, Richmond, Virginia.

A general business meeting. Contact the council for more information. The council plans to meet with the Virginia Community College Board the same day.

Contact: Fran Bradford, Regulatory Coordinator, State Council of Higher Education, Monroe Bldg., 101 N. 14th St., 9th Floor, Richmond, VA 23219, telephone (804) 225-2613.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

January 2, 1996 - 9 a.m. -- Open Meeting
† **February 6, 1996 - 9 a.m.** -- Open Meeting
† **March 5, 1996 - 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 Services Coordinator, 300 N. Main St., Hopewell, VA 23860, telephone (804) 541-2298.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (BOARD OF)

December 29, 1995 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Board of Housing and Community Development intends to amend regulations entitled: **VR 394-01-21. Virginia Uniform Statewide Building Code, Volume 1 - New Construction Code/1993.** The purpose of the proposed action is to (i) amend the "Notice of Violation" section to comport with the Code of Virginia; (ii) amend the requirements for the spacing of intermediate supports for guardrails; (iii) amend the sections that establish "Wind Zones" in Virginia to comply with those required by new federal regulation; (iv) delete vague and subjective text in the regulation regarding ice damming on roofs for one and two family dwellings; (v) raise the size and occupancy threshold regarding when permits are required for tents; and (vi) amend the "Existing Building" section for clarity and remove vague and subjective language which may be barriers to revitalization of existing buildings.

Statutory Authority: § 36-98 of the Code of Virginia.

Contact: Norman R. Crumpton, Program Manager, Department of Housing and Community Development, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170.


ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

January 9, 1996 - 1 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, Speaker's Conference Room, 6th Floor, Richmond, Virginia.

A regular meeting to discuss such matters as may be presented.

Contact: Adele MacLean, Secretary, Advisory Commission on Intergovernmental Relations, Eighth Street Office Bldg., Room 702, Richmond, VA 23219-1924, telephone (804) 786-6508 or FAX (804) 371-7999.


LIBRARY BOARD

† **January 8, 1996 - 10:30 a.m.** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, 3rd Floor, Supreme Court Room, Richmond, Virginia. 

A meeting to discuss administrative matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.


Automation and Networking Committee

† **January 8, 1996 - 9:45 a.m.** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia. 

A meeting to discuss automation and networking matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Executive Committee

† **January 8, 1996 - 8:45 a.m.** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of State Librarian, Richmond, Virginia. 

A meeting to discuss automation and networking matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Legislative and Finance Committee

† **January 8, 1996 - 9 a.m.** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Office of the Deputy State Librarian, Richmond, Virginia. ☎

A meeting to discuss legislative and financial matters.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Publications and Cultural Affairs Committee

† **January 7, 1996 - 4:15 p.m.** -- Open Meeting
Omni Richmond Hotel, 100 South 12th Street, Richmond, Virginia. ☎

A meeting to discuss matters related to the Publications and Cultural Affairs Division and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Public Library Development Committee

† **January 7, 1996 - 5:15 p.m.** -- Open Meeting
Omni Richmond Hotel, 100 South 12th Street, Richmond, Virginia. ☎

A meeting to discuss matters pertaining to public library development and The Library of Virginia.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Records Management Committee

† **January 8, 1996 - 9:45 a.m.** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Records Management Conference Room, Richmond, Virginia. ☎

A meeting to discuss matters pertaining to records management.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

Research and Information Services Committee

† **January 8, 1996 - 9 a.m.** -- Open Meeting
The Library of Virginia, 11th Street at Capitol Square, Conference Room B, Richmond, Virginia. ☎

A meeting to discuss research and information services.

Contact: Jean H. Taylor, Secretary to the State Librarian, The Library of Virginia, 11th Street at Capitol Square, Richmond, VA 23219, telephone (804) 786-2332.

COMMISSION ON LOCAL GOVERNMENT

January 8, 1996 - 10:30 a.m. -- Open Meeting
Town of Round Hill; site to be determined.

Oral presentations regarding the Town of Round Hill - County of Loudoun Agreement Defining Annexation Rights. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

January 8, 1996 - 7 p.m. -- Public Hearing
Town of Round Hill; site to be determined.

A public hearing regarding the Town of Round Hill - County of Loudoun Agreement Defining Annexation Rights. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

January 9, 1996 - 9 a.m. -- Open Meeting
Leesburg area; site to be determined.

A regular meeting of the commission to consider such matters as may be presented. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the commission.

Contact: Barbara Bingham, Administrative Assistant, Commission on Local Government, 702 8th Street Office Bldg., Richmond, VA 23219-1924, telephone (804) 786-6508 or (804) 786-1860/TDD ☎

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

† **February 23, 1996** -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Medical Assistance Services intends to amend regulations entitled: **12 VAC 30-50-160, Narrative for the Amount, Duration, and Scope of Services and Standards Established and 12 VAC 30-60-10 through 12 VAC 30-60-160, Methods Used to Assure High Quality of Care (1995 Expansion of Durable Medical Equipment).** The purpose of this proposal is to eliminate the requirement that recipients meet home bound criteria in

Calendar of Events

order to receive durable medical equipment by expanding the coverage of medically necessary durable medical equipment and supplies to the entire Medicaid population.

Statutory Authority: § 32.1-325 of the Code of Virginia and § 396 E 5 of the 1995 Appropriations Act.

Public comments may be submitted until February 23, 1996, to C. Mack Brankley, Director, Division of Program Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219.

Contact: Victoria P. Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8850.

Virginia Medicaid Drug Utilization Review Board

† **January 4, 1996 - 3 p.m.** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A quarterly meeting to conduct routine business.

Contact: Marianne R. Rollings, DUR Program Coordinator, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8057 or (804) 786-0414.

Virginia Medicaid Prior Authorization and VHOP Advisory Committee

† **January 4, 1996 - 4:30 p.m. (Approximately)** -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☎

A quarterly meeting immediately following the adjournment of the preceding DUR board meeting to conduct routine business.

Contact: David B. Shepherd, Pharmacy Supervisor, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-2773 or (804) 786-0414.

BOARD OF MEDICINE

Informal Conference Committee

† **January 4, 1996 - 9:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

† **January 10, 1996 - 10 a.m.** -- Open Meeting
Sheraton Inn - Roanoke Airport, 2727 Ferndale Drive, Roanoke, Virginia.

† **January 23, 1996 - 9:30 a.m.** -- Open Meeting
Department of Transportation, 86 Deacon Road, Falmouth, Virginia.

The Informal Conference Committee, composed of three members of the board, will inquire into allegations that certain practitioners may have violated laws and regulations governing the practice of medicine and other healing arts in Virginia. The committee will meet in open and closed sessions pursuant to § 2.1-344 A 7 and A 15 of the Code of Virginia. Public comment will not be received.

Contact: Karen W. Perrine, Deputy Executive Director, Department of Health Professions, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Occupational Therapy

† **January 11, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-08-1 (18 VAC 85-80-10 et seq.), Regulations for Certification of Occupational Therapists, and such other issues which may be presented.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Physical Therapy

† **January 12, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-03-1 (18 VAC 85-30-10 et seq.) Regulations Governing the Practice of Physical Therapy, and such other issues which may be presented.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Physicians Assistants

† **January 12, 1996 - Noon** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-05-1 (18 VAC 85-50-10 et seq.) Regulations Governing the Practice of Physicians Assistants, and such other issues which may be presented.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Advisory Board on Respiratory Therapy

† **January 11, 1996 - 1 p.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Board Room 4, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to review public comments and make recommendations to the board regarding the regulatory review of VR 465-04-1 (18 VAC 85-40-10 et seq.), Regulations Governing the Practice of Respiratory Therapy Practitioners, and such other issues which may be presented.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9908, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

State Human Rights Committee

January 26, 1996 - 9 a.m. -- Open Meeting
Central State Hospital, Petersburg, Virginia.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are listed for the meeting.

Contact: Theresa P. Evans, Acting State Human Rights Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, toll-free 1-800-451-5544 or (804) 371-8977/TDD ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

January 17, 1996 - 10 a.m. -- Open Meeting
Department of Mental Health, Mental Retardation and Substance Abuse Services, 109 Governor Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting of the board to discuss business and promulgate policy and regulations. The agenda will include a public comment period at the beginning of the meeting and the agenda will be available one week in advance of the meeting.

Contact: Jane V. Helfrich, Board Administrator Director, Department of Mental Health, Mental Retardation and Substance Abuse Services, Madison Bldg., 109 Governor St.,

Richmond, VA 23219, telephone (804) 786-7945 or toll-free 1-800-451-5544.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Division of Mined Land Reclamation

February 14, 1996 - 9:30 a.m. -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Big Stone Gap, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the permit streamlining/standardization work group to advise the agency on development of standardized, streamlined permit applications. This work group meeting is open to the public. There will be a public comment period at the conclusion of the meeting.

Contact: Les Vincent, Chief Engineer, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8178, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

VIRGINIA MUSEUM OF FINE ARTS

January 2, 1996 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Director's Office, Richmond, Virginia. ☎

A briefing for museum officers of current and upcoming museum activities. Public comment will not be received at the meeting.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221, telephone (804) 367-0553.

BOARD OF PHARMACY

† **January 4, 1996 - 8:30 a.m.** -- Open Meeting
† **January 5, 1996 - 8:30 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 4, Richmond, Virginia.

A meeting of several members of the board with the examination contractor for the board to begin work on a federal law component for the Board of Pharmacy's drug law examination. The meeting will consist of the workshop on the examination and will be held in executive session. No public comment will be received.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

† **January 10, 1996 - 9 a.m.** -- Open Meeting
January 25, 1996 - 8:30 a.m. -- CANCELLED
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 2, Richmond, Virginia.

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A meeting to conduct informal conferences. Public comments will not be received.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

† **January 11, 1996 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

A meeting to conduct a formal hearing before a panel of the board and informal conferences. Public comments will not be received.

Contact: Scotti W. Milley, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

Regulatory Committee

† **January 4, 1996 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.☎

A meeting to consider regulations for licensure of marriage and family therapists. Public comment will be received at 10:15 a.m.

Contact: Janet Delorme, Deputy Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9575.

† **January 5, 1996 - 10 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia.☎

A meeting to analyze and review current regulations governing the practice of professional counselors. Public comment will be received at 10:15 a.m.

Contact: Janet Delorme, Deputy Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad Street, 4th Floor, Richmond, VA 23230, telephone (804) 662-9575.

REAL ESTATE BOARD

† **January 17, 1996 - 1 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎

A public hearing on the real estate time share regulations pursuant to Executive Order 15(94).

Contact: Emily O. Wingfield, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or (804) 367-9753/TDD ☎

† **January 17, 1996 - 2 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎

A public hearing on the fair housing regulations pursuant to Executive Order 15(94).

Contact: Emily O. Wingfield, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or (804) 367-9753/TDD ☎

† **January 17, 1996 - 2 p.m.** -- Public Hearing
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia.☎

A public hearing on the real estate regulations pursuant to Executive Order 15(94).

Contact: Emily O. Wingfield, Acting Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8552 or (804) 367-9753/TDD ☎

VIRGINIA RESOURCES AUTHORITY

January 9, 1996 - 9:30 a.m. -- Open Meeting
February 13, 1996 - 9:30 a.m. -- Open Meeting
The Mutual Building, 909 East Main Street, Suite 607, Board Room, Richmond, Virginia.

The board will meet to approve minutes of the meeting of the prior month; 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, Mutual Building, Richmond, VA 23219, telephone (804) 644-3100 or FAX (804) 644-3109.

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

† **January 25, 1996 - 4 p.m.** -- Open Meeting
Richmond Nursing Home, 1900 Cool Lane, 2nd Floor, Classroom, Richmond, Virginia.☎

A monthly board meeting to discuss nursing home operations and related matters.

Contact: Marilyn H. West, Chairman, Richmond Hospital Authority, P.O. Box 548, Richmond, VA 23204-0548, telephone (804) 782-1938.

DEPARTMENT OF SOCIAL SERVICES (BOARD OF)

January 17, 1996 - 1 p.m. -- Public Hearing
Roanoke City Clerk's Office, Municipal Building, 215 Church Street, S.W., Room 456, Roanoke, Virginia.

January 22, 1996 - 1 p.m. -- Public Hearing
Williamsburg Regional Library, 515 Scotland Street, Williamsburg, Virginia.

January 31, 1996 - 1 p.m. -- Public Hearing
Stafford County Government Center, 1300 Courthouse Road, Board of Supervisors Chambers, Stafford, Virginia.

February 24, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Board of Social Services intends to consider adopting regulations entitled: **VR 615-01-57 [22 VAC 40-35-10 et seq.] The Virginia Independence Program.** The proposed regulation revises the Aid to Families with Dependent Children (AFDC) Program. It amends existing eligibility criteria related to (i) school attendance; (ii) receipt of assistance by minor parents; and (iii) cooperation in establishing and collecting support. The regulation adds (i) a rule placing a cap on additional benefits for children born to an AFDC family, and (ii) a work component, the Virginia Initiative for Employment Not Welfare (VIEW), in which able-bodied recipients must participate. The proposed regulation also includes a diversionary assistance component which offers otherwise eligible families the option to receive a single payment of up to four months assistance to meet an emergency, thereby avoiding the need for ongoing monthly AFDC benefits.

Statutory Authority: § 63.1-25 of the Code of Virginia.

Public comments may be submitted until February 24, 1996, to Constance O. Hall, Program Manager, Department of Social Services, 730 East Broad Street, Richmond, Virginia 23219-1849.

Contact: Carolyn Ellis, Program Consultant, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-1730.

BOARD OF SOCIAL WORK

† January 12, 1996 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 3, Richmond, Virginia. ☎

An ad hoc committee meeting on regulatory review for analysis of current regulations governing social work. Public comment will be received at 10:15 a.m.

Contact: Janet Delorme, Deputy Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9575, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

† January 25, 1996 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 4th Floor, Richmond, Virginia. ☎

A formal administrative hearing pursuant to § 9-6.14:12 of the Code of Virginia. Public comment will not be heard.

Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 6606 W. Broad St., Richmond, VA 23230-1717, telephone (804) 662-9967 or (804) 662-7197/TDD ☎

STATEWIDE HUMAN SERVICES INFORMATION AND REFERRAL ADVISORY COUNCIL

January 31, 1996 - 10 a.m. -- Open Meeting
United Way Services, 224 East Broad Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to receive public comment concerning the policies, directions and recommendations for services provided by the Statewide Human Services Information and Referral System. The council advises the Department of Social Services in the administration of free and confidential information provided to citizens of the Commonwealth. The department contracts with five regional centers to provide the free and confidential information on the vast range of private and public agencies and programs that provide services to Virginians throughout the Commonwealth.

Contact: Zandra Thompson, Human Services Program Specialist, Department of Social Services, 730 E. Broad St., Richmond, VA 23219-1849, telephone (804) 692-2202, FAX (804) 692-2209 or toll-free 1-800-552-7096/TDD ☎

DEPARTMENT OF TAXATION

March 22, 1996 - 10 a.m. -- Public Hearing
Department of Taxation, 2220 West Broad Street, Richmond, Virginia.

March 31, 1996 -- Public comments may be submitted until this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Department of Taxation intends to adopt regulations entitled: **VR 630-3-439 [23 VAC 10-120-291 through 23 VAC 10-120-299]. Major Business Facility Job Tax Credit.** The regulation provides guidance for qualification, computation and recapture of the major business facility job tax credit.

Statutory Authority: § 58.1-439 of the Code of Virginia.

Contact: David M. Vistica, Tax Policy Analyst, Office of Tax Policy, Department of Taxation, P.O. Box 1880, Richmond, VA 23282-1880, telephone (804) 367-0167 or FAX (804) 367-6020.

Calendar of Events

COMMONWEALTH TRANSPORTATION BOARD

† **January 17, 1996 - 2 p.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street,
Richmond, Virginia. (Interpreter for the deaf provided upon
request)

A work session of the board and the Department of
Transportation staff.

Contact: Robert E. Martinez, Secretary of Transportation,
1401 E. Broad St., Richmond, VA 23219, telephone (804)
786-8032.

† **January 18, 1996 - 10 a.m.** -- Open Meeting
Department of Transportation, 1401 East Broad Street,
Virginia. (Interpreter for the deaf provided upon request)

A monthly meeting of the board to vote on proposals
presented regarding bids, permits, additions and
deletions to the highway system, and any other matters
requiring board approval. Public comment will be
received at the outset of the meeting on items on the
meeting agenda for which the opportunity for public
comment has not been afforded the public in another
forum. Remarks will be limited to five minutes. Large
groups are asked to select one individual to speak for
the group. The board reserves the right to amend these
conditions. Separate committee meetings may be held
on call of the chairman. Contact Department of
Transportation Public Affairs at (804) 786-2715 for
schedule.

Contact: Robert E. Martinez, Secretary of Transportation,
1401 E. Broad St., Richmond, VA 23219, telephone (804)
786-8032.

BOARD FOR THE VISUALLY HANDICAPPED

January 17, 1996 - 1 p.m. -- Open Meeting
Department for the Visually Handicapped, Administrative
Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The board is responsible for advising the Governor, the
Secretary of Health and Human Resources, the
Commissioner, and the General Assembly on the
delivery of public services to the blind and the protection
of their rights. The board also reviews and comments on
policies, budgets and requests for appropriations for the
department. At this regular quarterly meeting, the board
members will receive information regarding department
activities and operations, review expenditures from the
board's institutional fund, and discuss other issues
raised by board members.

Contact: Katherine C. Proffitt, Administrative Assistant,
Department for the Visually Handicapped, 397 Azalea Ave.,
Richmond, VA 23227, telephone (804) 371-3140/TDD or
toll-free 1-800-622-2155.

DEPARTMENT FOR THE VISUALLY HANDICAPPED

Advisory Committee on Services

February 3, 1996 - 11 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative
Headquarters, 397 Azalea Avenue, Richmond, Virginia. (Interpreter for the deaf provided upon request)

The committee meets quarterly to advise the Board for
the Visually Handicapped on matters related to services
for blind and visually handicapped citizens of the
Commonwealth.

Contact: Barbara G. Tyson, Executive Secretary Senior,
Department for the Visually Handicapped, 397 Azalea Ave.,
Richmond, VA 23227, telephone (804) 371-3140 or toll-free
1-800-622-2155.

VIRGINIA VOLUNTARY FORMULARY BOARD

† **February 1, 1996 - 10 a.m.** -- Public Hearing
Madison Building, 109 Governor Street, Main Floor,
Conference Room, Richmond, Virginia.

The board will hold 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 May 1, 1994. Copies
of the proposed revisions to the formulary are available
for inspection at the Virginia Department of Health,
Bureau of Pharmacy Services, Monroe Building, 101
North 14th Street, Richmond, Virginia. Written
comments sent to the above address and received prior
to 5 p.m. on February 1, 1996, will be made a part of the
hearing record.

Contact: James K. Thomson, Director, Bureau of Pharmacy
Services, Virginia Voluntary Formulary, Monroe Bldg., 101 N.
14th St., Room S-45, Richmond, VA 23219, telephone (804)
786-4326.

† **March 14, 1996 - 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, Director, Bureau of Pharmacy
Services, Virginia Voluntary Formulary, Monroe Bldg., 101 N.
14th St., Room S-45, Richmond, VA 23219, telephone (804)
786-4326.

VIRGINIA WAR MEMORIAL FOUNDATION

Board of Trustees

January 9, 1996 - Noon -- Open Meeting
Virginia War Memorial, 621 Belvidere Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular business meeting to vote on proposed changes to bylaws.

Contact: Jon C. Hatfield, Assistant Director, Department of General Services, Division of Engineering and Buildings, 805 E. Broad St., Richmond, VA 23219, telephone (804) 786-3263.

STATE WATER CONTROL BOARD

January 8, 1996 - 7 p.m. -- Open Meeting
Virginia War Memorial Auditorium, 621 South Belvidere Street, Richmond, Virginia.

January 10, 1996 - 7 p.m. -- Open Meeting
Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, Virginia.

A meeting to receive comments from the public on the Notices of Intended Regulatory Action on the regulations governing aboveground storage tanks and tank vessels.

Contact: David Ormes, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4263.

January 18, 1996 - 7 p.m. -- Public Hearing
James City County Board of Supervisors Room, 101C Mounts Bay Road, Building C, Williamsburg, Virginia.

January 29, 1996 -- Public comments may be submitted until 4 p.m. on this date.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the State Water Control Board intends to adopt regulations entitled: **VR 680-14-10 [9 VAC 25-115-10 et seq.] General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities.** The purpose of the proposed regulation is to establish limits for the discharge of wastewater and storm water associated with industrial activity from seafood processing facilities.

Question and answer period: A question and answer period will be held one half hour prior to the public hearing at the same location. Interested citizens will have an opportunity to ask questions pertaining to the proposal at that time.

Accessibility to persons with disabilities: The public hearing will be held at facilities believed to be accessible to persons with disabilities. Any person with questions should contact Mr. Michael B. Gregory at the address below. Persons

needing interpreter services for the deaf should notify Mr. Gregory no later than Monday, January 8, 1996, TDD (804) 762-4021.

Request for comments: The board is seeking written comments from interested persons on both the proposed regulatory action and the draft permit. Also, comments regarding the benefits of the stated alternative or any other alternatives are welcome. Comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. Only those comments received by January 29, 1996, will be considered by the board.

Other information: The department has conducted analyses on the proposed regulation related to the basis, purpose, substance, issues and estimated impacts. These are available upon request from Mr. Gregory at the address below.

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

Contact: Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 762-4065 or (804) 762-4021/TDD.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS

† February 6, 1996 - 10 a.m. - Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, 4th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to discuss regulatory review and other matters requiring board action. A public comment period will be held at the beginning of the meeting. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least 10 days prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Nancy Taylor Feldman, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8590, FAX (804) 367-2474 or (804) 367-9753/TDD

LEGISLATIVE

JOINT LEGISLATIVE AND AUDIT REVIEW COMMISSION

† January 9, 1996 - 2 p.m. -- Open Meeting
General Assembly Building, 910 Capitol Square, 10th Floor Conference Room, Richmond, Virginia.

A staff briefing on minority-owned business participation in state contracts.

Calendar of Events

Contact: Phillip A. Leone, Director, Joint Legislative and Audit Review Commission, General Assembly Building, 910 Capitol St., Suite 1100, Richmond, VA 23219, telephone (804) 786-1258.

Local Government, Commission on Resources Authority, Virginia War Memorial Foundation, Virginia - Board of Trustees

CHRONOLOGICAL LIST

OPEN MEETINGS

January 2, 1996

Hopewell Industrial Safety Council
Museum of Fine Arts, Virginia
- Board of Trustees

January 4

† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board
† Elections, State Board of
† Health, Department of
- Biosolids Use Information Committee
- Biosolids Use Regulations Advisory Committee
† Medical Assistance Services, Department of
- Virginia Medicaid Drug Utilization Review Board
- Virginia Medicaid Prior Authorization and VHOP Advisory Committee
† Medicine, Board of
† Pharmacy, Board of
† Professional Counselors and Marriage and Family Therapists, Board of

January 5

† Pharmacy, Board of
† Professional Counselors and Marriage and Family Therapists, Board of

January 7

† Library Board
- Publications and Cultural Affairs Committee
- Public Library Development Committee

January 8

Alcoholic Beverage Control Board
† Competition Council, Commonwealth
Hearing Aid Specialists, Board for
Higher Education Tuition Trust Fund, Virginia
† Library Board
- Automation and Networking Committee
- Executive Committee
- Legislative and Finance Committee
- Library Board
- Records Management Committee
- Research and Information Services Committee
Local Government, Commission on
Water Control Board, State

January 9

† Emergency Planning Committee - Local, Arlington County/City of Falls Church/Washington National Airport
† Environmental Quality, Department of
Game and Inland Fisheries, Board of
Intergovernmental Relations, Advisory Commission on
† Joint Legislative Audit and Review Commission

January 10

† Agriculture and Consumer Services, Department of
- Board of Agriculture and Consumer Services
† Community Colleges, State Board of
† Contractors, Board for
† Forestry, Board of
† Funeral Directors and Embalmers, Board of
† Higher Education for Virginia, State Council of
† Medicine, Board of
† Pharmacy, Board of
Water Control Board, State

January 11

† Agriculture and Consumer Services, Department of
- Pesticide Control Board
† Community Colleges, State Board for
† Funeral Directors and Embalmers, Board of
† Health, State Board of
† Medicine, Board of
- Advisory Board on Occupational Therapy
- Advisory Board on Respiratory Therapy
† Pharmacy, Board of

January 12

Environmental Quality, Department of
- Technical Advisory Committee for Solid Waste Management Regulations
† Health, State Board of
† Medicine, Board of
- Advisory Board on Physical Therapy
- Advisory Committee on Physician's Assistants
Social Work, Board of

January 15

Cosmetology, Board for

January 16

† Corrections, Board of
- Correctional Services Committee
† Health Professions, Board of
- Ad Hoc Levels of Regulations Committee
- Practitioner Self-Referral Committee
- Regulatory Research Committee

January 17

† Corrections, Board of
- Administration Committee
Dentistry, Board of
Mental Health, Mental Retardation and Substance Abuse Services Board, State
† Transportation Board, Commonwealth
Visually Handicapped, Board for the

January 18

Dentistry, Board of
- Endorsement Committee
† Education, Board of
† Transportation Board, Commonwealth

Calendar of Events

January 19

Agriculture and Consumer Services, Department of
- Virginia Horse Industry Board
Dentistry, Board of
- Endorsement Committee

January 22

Accountancy, Board for
Alcoholic Beverage Control Board

January 23

Accountancy, Board for
† Health Services Cost Review Council, Virginia
† Medicine, Board of

January 24

† Emergency Planning Committee - Local, Gloucester
County

January 25

† Richmond Hospital Authority
- Board of Commissioners
† Social Work, Board of

January 26

Mental Health, Mental Retardation and Substance Abuse
Services, Department of
- State Human Rights Committee

January 31

Statewide Human Services Information and Referral
Advisory Council

February 1

† Conservation and Recreation, Department of
- Falls of the James Scenic River Advisory Board

February 2

Environmental Quality, Department of
- Technical Advisory Committee for Solid Waste
Management Regulations

February 3

Visually Handicapped, Department for the
- Advisory Committee on Services

February 5

Alcoholic Beverage Control Board

February 6

† Hopewell Industrial Safety Council
† Waterworks and Wastewater Works Operators, Board
for

February 13

Resources Authority, Virginia

February 14

Mines, Minerals and Energy, Department of
- Division of Mined Land Reclamation

February 21

Alcoholic Beverage Control Board

February 22

† Education, Board of

February 23

Environmental Quality, Department of
- Technical Advisory Committee for Solid Waste
Management Regulations

March 5

† Hopewell Industrial Safety Council

March 13

† Community Colleges, State Board for

March 14

† Community Colleges, State Board for
† Voluntary Formulary Board, Virginia

PUBLIC HEARINGS

January 8, 1996

Local Government, Commission on

January 17

† Real Estate Board

January 18

† Water Control Board, State

February 1

† Voluntary Formulary Board, Virginia

March 22

Taxation, Department of
