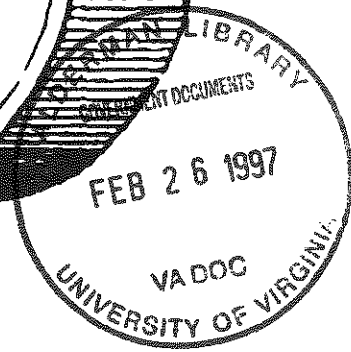
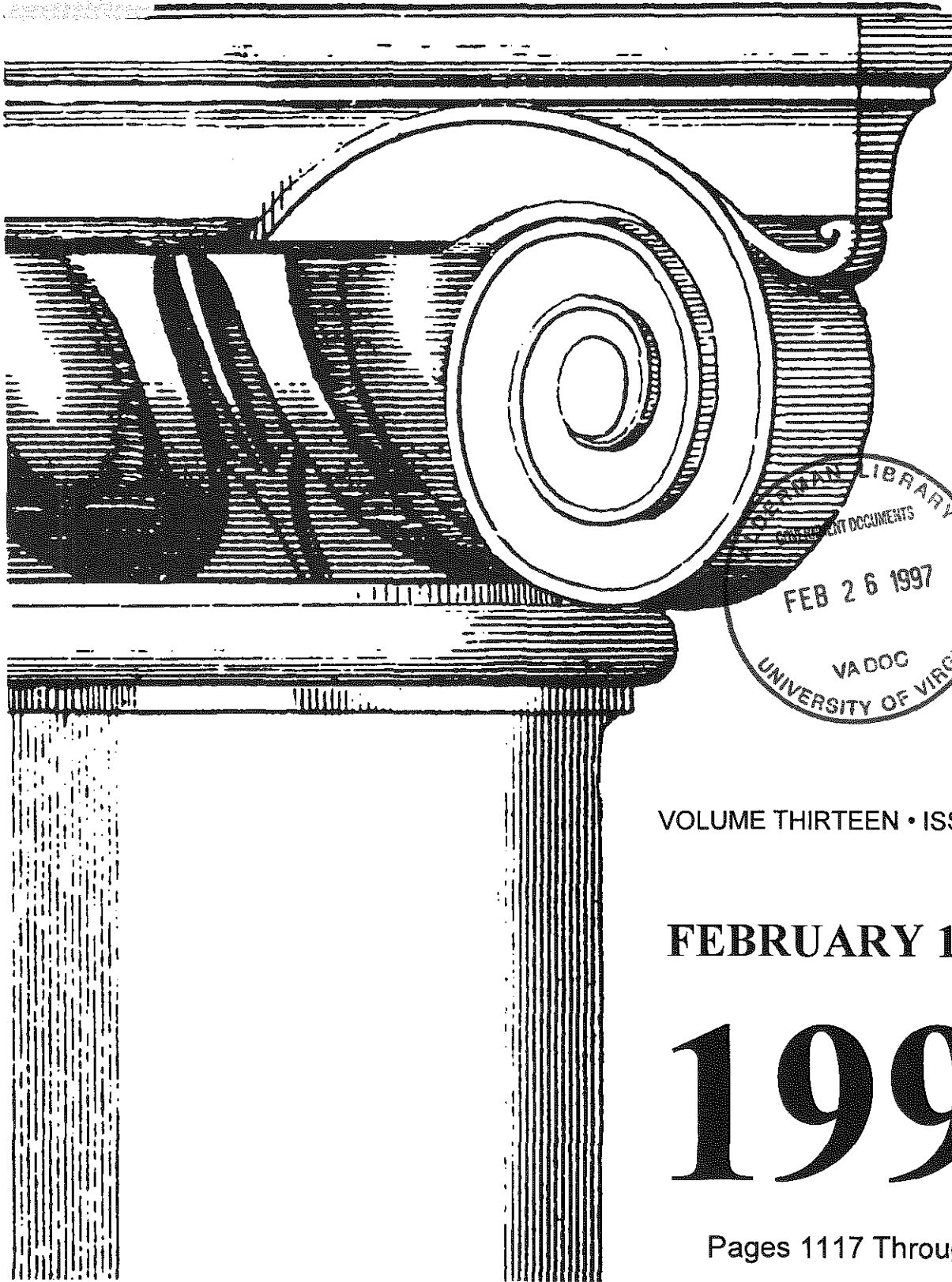


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THE VIRGINIA REGISTER

OF REGULATIONS

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VOLUME THIRTEEN • ISSUE ELEVEN

FEBRUARY 17, 1997

1997

Pages 1117 Through 1242

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 new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in **THE VIRGINIA REGISTER OF REGULATIONS**. In addition, **THE VIRGINIA REGISTER** is a source of other information about state government, including all emergency regulations and executive orders issued by the Governor, the Virginia Tax Bulletin issued periodically by the Department of Taxation, and notices of 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 intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

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 21 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 agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate standing committees and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-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 21-day extension period; (ii) the Governor exercises his authority to require the agency to provide for 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 provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period.

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

EMERGENCY REGULATIONS

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt 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 to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) deliver the Notice of Intended Regulatory Action to the Registrar in time to be published within 60 days of the effective date of the emergency regulation; and (ii) deliver the proposed regulation to the Registrar in time to be published within 180 days of the effective date of the emergency regulation. If the agency chooses not 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

The *Virginia Register* is cited by volume, issue, page number, and date. 12:8 VA.R. 1096-1106 January 8, 1996, refers to Volume 12, Issue 8, pages 1096 through 1106 of the *Virginia Register* issued on January 8, 1996.

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The *Virginia Register of Regulations* is published pursuant to Article 7 (§ 9-6.14:22 et seq.) of Chapter 1.1:1 of the Code of Virginia. Individual copies, if available, may be purchased for \$4.00 each from the Registrar of Regulations.

Members of the Virginia Code Commission: Joseph V. Gartlan, Jr., Chairman; W. Tayloe Murphy, Jr., Vice Chairman; Robert L. Calhoun; Russell M. Carneal; Bernard S. Cohen; Jay W. DeBoer; Frank S. Ferguson; E. M. Miller, Jr.; Jackson E. Reasor, Jr.; James B. Wilkinson.

Staff of the Virginia Register: E. M. Miller, Jr., Acting Registrar of Regulations; Jane D. Chaffin, Deputy Registrar of Regulations.

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By Noon Wednesday**

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March 3, 1997

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March 17, 1997

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March 31, 1997

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NOTICES OF INTENDED REGULATORY ACTION

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 promulgating regulations entitled: **9 VAC 5-510-10 et seq. General Permit for Nonmetallic Mineral Mining.** The purpose of the proposed action is to develop a general permit that will provide terms and conditions that form the legally enforceable basis for the implementation of all regulatory and statutory requirements applicable to new and existing emissions units in the nonmetallic mineral mining facilities.

Public Meeting: A public meeting will be held by the Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia, at 10 a.m. on March 20, 1997, to discuss the intended action. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to regulation development.

Technical Advisory Committee: The department will form a technical advisory committee to assist in the development of the regulation. If you desire to be on the committee, notify the agency contact in writing by 4:30 p.m. on March 21, 1997, and provide your name, address, phone number and the organization you represent, if any. Notification of the composition of the technical advisory committee will be sent to all applicants. If you wish to be on the committee, you are encouraged to attend the public meeting mentioned above. The primary function of the committee is to develop a recommended regulation for department consideration through the collaborative approach of regulatory negotiation and consensus.

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 drafted pursuant to this notice.

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

Public comments may be submitted until 4:30 p.m. on March 21, 1997.

Contact: Robert A. Mann, Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419, FAX (804) 698-4510, toll-free 1-800-592-5492, or (804) 698-4021.

VA.R. Doc. No. R97-258; Filed January 29, 1997, 11:36 a.m.

BOARD FOR ASBESTOS LICENSING AND LEAD CERTIFICATION

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 for Asbestos Licensing and Lead Certification intends to consider amending regulations entitled: **18 VAC 15-10-10 et seq. Public Participation Guidelines.** The purpose of the proposed action is to evaluate the public participation guidelines for effectiveness. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 9-6.14:7.1 and 54.1-501 of the Code of Virginia.

Public comment may be submitted until March 7, 1997.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2176 or FAX (804) 367-2475.

VA.R. Doc. No. R97-227; Filed January 13, 1997, 11:58 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 for Asbestos Licensing and Lead Certification intends to consider amending regulations entitled: **18 VAC 15-20-10 et seq. Virginia Asbestos Licensing Regulations.** The purpose of the proposed action is to evaluate the regulations for effectiveness as required by the Public Participation Guidelines and to amend the Asbestos Licensing Regulations to implement changes created by an act of the 1996 General Assembly. Other changes to the regulation which may be necessary will be considered. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: § 54.1-501 of the Code of Virginia.

Public comment may be submitted until March 7, 1997.

Contact: Kent Steinruck, Regulatory Boards Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2176 or FAX (804) 367-2475.

VA.R. Doc. No. R97-228; Filed January 13, 1997, 11:58 a.m.

Notices of Intended Regulatory Action

DEPARTMENT OF LABOR AND INDUSTRY

Safety and Health Codes 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 Safety and Health Codes Board intends to consider amending regulations entitled: **16 VAC 25-50-10 et seq. Boiler and Pressure Vessel Rules and Regulations.** The purpose of the proposed action is to amend the regulations to incorporate changes recommended during the review process and incorporate the 1995 revisions to the National Board Inspection Code issued by the National Board of Boiler and Pressure Vessel Inspectors. The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 40.1-22 and 40.1-51.6 of the Code of Virginia.

Public comments may be submitted until March 5, 1997.

Contact: Fred Barton, Boiler Chief Inspector, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-3262, FAX (804) 371-2324, or (804) 786-2376.

VA.R. Doc. No. R97-232; Filed January 15, 1997, 10:58 a.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: **12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care, and 12 VAC 30-90-10 et seq. Methods and Standards for Establishing Payment Rates for Long-Term Care.** The purpose of the proposed action is to promulgate changes to policies regarding specialized care services as a result of the study directed by Chapter 912 of the 1996 Appropriations Act. 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 February 19, 1997.

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. R97-219; Filed December 31, 1996, 11:02 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 Department of Medical Assistance Services intends to consider amending regulations entitled: **12 VAC 30-120-400. Medallion II: Quality Control and Utilization Review.** The purpose of the proposed action is to promulgate federal requirements regarding monitoring HMOs under contract to Medicaid. 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 March 19, 1997.

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. R97-254; Filed January 29, 1997, 11:39 a.m.

BOARD OF NURSING HOME ADMINISTRATORS

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 Nursing Home Administrators intends to consider amending regulations entitled: **18 VAC 95-20-10 et seq. Regulations of the Board of Nursing Home Administrators.** The purpose of the proposed action is to simplify and clarify regulations and to eliminate unnecessary or redundant regulations according to recommendations of Executive Order 15(94). The agency intends to hold a public hearing on the proposed regulation after publication.

Statutory Authority: §§ 54.1-2400 and 54.1-3101 of the Code of Virginia.

Public comments may be submitted until February 19, 1997.

Contact: Elizabeth Kirksey, Executive Director, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9941 or FAX (804) 662-9943.

VA.R. Doc. No. R97-218; Filed December 31, 1996, 11:45 a.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 amending regulations entitled: **11 VAC 10-20-260 et seq. Part III: Pari-Mutuel Wagering.** The purpose of the proposed action is to amend the regulations pertaining to pari-mutuel wagering to incorporate a popular wager and include the latest language from the model rules of the Association of Racing Commissioners International. The

Notices of Intended Regulatory Action

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 March 19, 1997.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-249; Filed January 28, 1997, 9:34 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 Virginia Racing Commission intends to consider amending regulations entitled: **11 VAC 10-60-10 et seq. Regulations Pertaining to Horse Racing with Pari-Mutuel Wagering: Participants.** The purpose of the proposed action is to amend the regulations pertaining to participants to allow the commission to participate fully in the new multi-state licensing system. 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 March 19, 1997.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363 or FAX (804) 371-6127.

VA.R. Doc. No. R97-249; Filed January 28, 1997, 9:34 a.m.

STATE WATER CONTROL BOARD

† Withdrawal of Notice of Intended Regulatory Action

The State Water Control Board has **WITHDRAWN** the Notice of Intended Regulatory Action for promulgating VR 680-15-07. General Virginia Water Protection Permit Regulations for Minor Road Crossings, Associated Fills and Channel Modifications. The notice was initially published in 9:24 VA.R. 4423 August 23, 1993.

VA.R. Doc. No. R97-256; Filed January 29, 1997, 11:35 a.m.

† Withdrawal of Notice of Intended Regulatory Action

The State Water Control Board has **WITHDRAWN** the Notice of Intended Regulatory Action for promulgating VR 680-13-06. Virginia Petroleum Storage Tank Fund Requirements. The notice was initially published in 9:23 VA.R. 4133 August 9, 1993.

VA.R. Doc. No. R97-257; Filed January 29, 1997, 11:36 a.m.

† Withdrawal of Notice of Intended Regulatory Action

The State Water Control Board has **WITHDRAWN** the Notice of Intended Regulatory Action for amending VR 680-21-01. Water Quality Standards to include in the procedures for designating exceptional waters an opportunity for local governments to determine if a proposed exceptional waters nomination is consistent with local comprehensive planning. The notice was initially published in 10:11 VA.R. 2828 February 21, 1994.

VA.R. Doc. No. R97-255; Filed January 29, 1997, 11:35 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.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

March 19, 1997 - 10 a.m. -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

April 18, 1997 -- 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 Professional Counselors and Marriage and Family Therapists intends to adopt regulations entitled: **18 VAC 115-50-10 et seq. Regulations Governing the Practice of Marriage and Family Therapy.** The purpose of the proposed regulation is to comply with statutory requirements to establish standards of ethics, fees and criteria for licensure of marriage and family therapists.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

VIRGINIA WASTE MANAGEMENT BOARD

March 19, 1997 - 10 a.m. -- Public Hearing
The Library of Virginia, 800 East Broad Street, First Floor, Lecture Hall, Richmond, Virginia.

March 20, 1997 - 1:30 p.m. -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board Meeting Room, Roanoke, Virginia.

April 18, 1997 -- Public comments may be submitted until 5 p.m. on this date to the address listed below or by hand delivery to 629 East Main Street, Richmond, VA.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to adopt regulations entitled: **9 VAC 20-**

160-10 et seq. Voluntary Remediation Regulations. The purpose of the proposed regulation is to govern voluntary remediation of releases of hazardous substance, hazardous waste, solid waste, or petroleum.

Statutory Authority: § 10.1-1429.1 of the Code of Virginia.

Contact: Robert G. Wickline, P.E., Office of Technical Assistance, Waste Division, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

STATE WATER CONTROL BOARD

March 18, 1997 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia.

March 19, 1997 - 11 a.m. -- Public Hearing
Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, Virginia.

March 20, 1997 - 2 p.m. -- Public Hearing
Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia.

April 18, 1997 - 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: **9 VAC 25-194-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Car Wash Facilities.** The purpose of the proposed regulation is to establish a general permit to cover the car wash facility category of point source discharges to surface waters.

Request for Comments: The board is giving notice on the proposed adoption of 9 VAC 25-194-10 et seq. and the issuance of the General VPDES Permit (VAG75) to discharge to state waters and state certification under the State Water Control Law. The board is seeking written comments from interested persons on both the proposed regulatory action and the draft permit, and also comments regarding the cost

Public Comment Periods - Proposed Regulations

and benefits of the stated alternative or any other alternatives. 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 within this period will be considered by the board.

Other Information: The Department of Environmental has conducted analyses on the proposed regulation related to the basis, purpose, substance, issues and estimated impacts. These are available upon request from Mr. Cosby at the address below.

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 George Cosby. Persons needing interpreter services for the deaf should notify Mr. Cosby no later than March 7, 1997.

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

Contact: George Cosby, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4067.

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.

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

Title of Regulation: 18 VAC 115-50-10 et seq. Regulations Governing the Practice of Marriage and Family Therapy.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Date: March 19, 1997 - 10 a.m.

Public comments may be submitted until April 18, 1997.
(See Calendar of Events section for additional information)

Basis: Chapters 24 (§ 54.1-2400 et seq.) and 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia provide the basis for these regulations. Chapter 24 establishes the general powers and duties of the health regulatory boards including the power to assess fees, establish qualifications for licensure and the responsibility to promulgate regulations. Chapter 35 establishes the Board of Professional Counselors and Marriage and Family Therapists and authorizes that board to administer the licensure of marriage and family therapists. Section 54.1-3505 authorizes the board to promulgate regulations for the qualifications, education and experience for licensure of marriage and family therapists.

Purpose: The purposes of the regulation are to:

1. Comply with statutory requirements that the board establish fees to cover expenses for administration of the licensure program.
2. Comply with statutory requirements that the board establish qualifications for licensure as necessary to ensure competence and integrity of licensed individuals in order to protect the health, safety and welfare of the public.
3. Establish criteria for endorsement for individuals who are licensed in other states or licensed in Virginia as professional counselors.
4. Establish an examination requirement for licensure.
5. Establish a process for renewal and reinstatement of expired and lapsed licenses.
6. Set appropriate standards of conduct to provide a basis for disciplinary action for misconduct.

Substance: 18 VAC 115-50-10 incorporates definitions of words with meanings specific to the regulation that are not already defined in statute.

18 VAC 115-50-20 establishes fees for registration of supervision, application, license renewal and reinstatement, verification services, duplicate or replacement licenses and wall certificates, and penalty fees for late renewal and returned checks.

18 VAC 115-50-30 sets forth the prerequisites for licensure and outlines the documentation required for application for licensure by examination.

18 VAC 115-50-40 outlines the documentation required for application for licensure by endorsement.

18 VAC 115-50-50 establishes specific education and experience requirements for licensure, sets forth qualifications for individuals who can provide supervision to residents and outlines documentation required to register a supervisor with the board.

18 VAC 115-50-60 establishes an examination requirement, limits the time frame for taking the examination following board approval, and sets forth additional training requirements in areas of deficiency for individuals who have failed the examination twice.

18 VAC 115-50-70 establishes criteria for waiver of the examination requirement.

18 VAC 115-50-80 provides for license renewal, and establishes reinstatement requirements for individuals whose licenses have expired.

18 VAC 115-50-100 establishes standards of professional conduct.

18 VAC 115-50-110 outlines violations that constitute grounds for disciplinary action or denial to issue or renew a license.

Issues:

A. Definitions. Certain terms that are not already defined in statute have specific meanings in the context of the regulation. Definitions of these terms will reduce the potential for confusion and ambiguous interpretation of the regulation.

Advantages: The definitions included in the proposed regulation provide clarity to applicants, supervisors, regulatory officials and the general public. Definitions are also valuable enforcement tools when scope of practice issues arise.

Disadvantages: Definitions in the proposed regulation present no disadvantages to the general public, applicants, licensees, the board or the agency.

B. Proposed Fees. The board is mandated under § 54.1-113 to collect sufficient fees to cover expenses incurred in operating the licensure program. The Code of Virginia (§ 54.1-2400) provides statutory authority for establishment of fees for the administration and operation of the regulatory program.

Advantages: Assessing fees for certification will enable the board to comply with statutory mandates to collect fees sufficient to meet expenses. The board has already expended funds to cover costs of staff time and

subcommittee meetings in developing the proposed regulation.

Disadvantages: As with any credential, obtaining a license as a marriage and family therapist will involve a personal financial expense to those individuals seeking licensure. The board considered the fee reduction proposal currently in the review process for professional counselor licensure, and is proposing a comparable fee structure for marriage and family therapist licensure. The proposed regulation also includes endorsement criteria, which will reduce the expense for obtaining a license for individuals who can document meeting those criteria.

C. Education and Experience Requirements. The board is mandated under § 54.1-2400 to establish qualifications for certification which are necessary to ensure competence and integrity to engage in regulated professions. In addition, the board is mandated under § 54.1-3505 (6) to promulgate regulations for the qualifications, education, and experience for licensure of marriage and family therapists. This statute further stipulates that the educational credit hour, clinical experience hour and clinical supervision hour requirements shall not be less than those established in regulation for professional counselors.

The board appointed a subcommittee from its regulatory subcommittee to recommend criteria for licensure. At its first meeting, the subcommittee identified the major issues for consideration in developing these criteria:

- The educational requirement should not present a barrier to applicants whose graduate degrees are closely related, but not specific to marriage and family therapy.
- The educational requirement should specify the minimum core areas of course work that would ensure the competency and integrity of individuals licensed to practice marriage and family therapy independently.
- Availability of courses in Virginia's graduate programs should be considered in the establishment of the core areas.
- Alternatives for the educational and experience hour requirements are limited by § 54.1-3505 (6) which prescribes that those hours shall not be less than those required for professional counselor licensure.
- The regulation should include criteria that for supervisors to ensure that they are qualified to properly train candidates for licensure to practice marriage and family independently.
- The regulation should include an examination requirement covering knowledge in practice theory and legal and ethical issues.
- The regulation should contain criteria for endorsing marriage and family therapists licensed in other jurisdictions through standards substantially equivalent to the board's.

Advantages. Licensure for marriage and family therapists was established by the 1996 General Assembly on the basis that treatment modalities for this type of practice are distinct from those used by other mental health service providers.

The training and experience requirements set forth in the regulation will ensure that individuals licensed to practice marriage and family therapy independently possess training and experience in areas identified as unique to this profession.

The public will benefit from increased availability of services, and from having the assurance that an individual holding himself out as a marriage and family therapist has received specialized education and training to provide these services.

Government agencies will benefit from the ability to more accurately identify practitioners who can provide these services.

Disadvantages. Individuals who wish to hold themselves out as marriage and family therapists will be required to obtain the education and experience set forth in the regulations and pay the registration, application and renewal fees to obtain and maintain the license. This process will be simplified and less costly for individuals who can meet the endorsement criteria in the regulation.

Individuals who are currently licensed as mental health service providers may not meet the requirements for marriage and family therapist licensure set forth in the regulation. With this in mind, the board is proposing a one year "grandfathering" of currently licensed professional counselors who can document meeting four of the seven core areas of course work. The law does not restrict licensed mental health service providers from continuing to provide services to couples and families in their areas of competency as long as they do not hold themselves out as or use the title marriage and family therapist.

These regulations will present no disadvantages to the consuming public or to government agencies whose employees are exempt from the licensure requirement under § 54.1-3501.

D. Examination. Attainment of a professional license is generally contingent upon passing an examination which test the applicant's applied knowledge and skills in a profession. The examination is an essential tool for evaluating the competency of an individual to practice in a profession, and to test understanding of the laws and standards of ethics that govern the profession.

The board determined that individuals licensed to practice marriage and family therapy independently should be tested for practice knowledge and skills, and the laws and standards of conduct governing the profession. The board is proposing a waiver of the examination requirement for individuals who are licensed as marriage and family therapists in other states, or who are clinical members of the AAMFT. Statute provides for licensure without examination for current licensed professional counselors who can meet the board's requirements for licensure as marriage and family therapists.

Advantages. The examination will assist the board in determining that the individuals granted licensure to practice independently are competent to practice and understand the ethical and legal issues involved in that practice.

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The public will benefit from having greater assurance that practitioners who obtained the license were tested for competency.

Certified providers will benefit from the knowledge of laws and regulations governing their profession, and may avoid disciplinary action through this awareness.

Disadvantages. Applicants who do not qualify for endorsement will be required to pay a fee directly to the examination service to sit for the examination. It is expected that the examination fee assessed by the chosen vendor will range from \$75 to \$125.

Employers in the public and private sector may incur costs if they choose to reimburse employees for expenses involved in the licensure process.

E. Renewal and reinstatement of a license.

Advantages. As stated previously, the board is mandated to collect fees to cover all expenses incurred in the administration of the regulatory program. The bulk of the board's expenses are covered by renewal fees. The proposed biennial renewal schedule saves approximately \$10,000 in administrative costs over annual renewal, and is frequent enough to allow for periodic adjustments in fees as needed to balance the budget.

The board is proposing a reapplication requirement for individuals whose licenses have lapsed more than five years. This requirement will allow the board to ensure that individuals who have not been providing services for a significant length of time are knowledgeable of new theories and techniques, and of current laws and regulations governing their practice. It will also enable the board to ensure that these applicants have not been disciplined for misconduct under another license or certificate. The public will benefit from this insurance of the continued competency and integrity of their providers.

Disadvantages. Individuals who allow their licenses to lapse more than five years will have to reapply under the board's current regulation and take the current examination. If the examination requirement has not changed since the first time the individual was licensed, the examination would not have to be repeated.

F. Standards of Practice. State law requires that the board establish regulations that include provisions for disciplinary action. Standards of practice provide the basis for disciplinary action for misconduct, and provide guidelines for professional behavior in the provision of services.

Advantages: Standards of Practice provide practitioners with a framework for professional conduct, and provide the basis for board action against unscrupulous or unqualified providers, thereby protecting the public.

Disadvantages: The proposed Standards of Practice present no disadvantage to practitioners, clients, state or private facilitates, or the general public.

Estimated Fiscal Impact:

A. Projected number of persons affected and their cost of compliance: It is estimated that 800 individuals will apply for this license soon after the effective date of the regulations.

After the initial certification period, it is estimated that the number of applicants will average 100 per year. Those applying will pay a \$50 application fee to the board. Individuals who do not qualify for endorsement will pay an examination fee of approximately \$75 to \$125 to an outside vendor. Each biennium, all licensees will pay a \$75 licensure renewal fee.

B. Costs to the agency for implementation: Establishment of the licensure program will result in increased expenditures for data processing, contractual services (production and mailing of application packages, notices and amended regulations), personal services (board credentials reviews and hearings, discipline hearings, regulatory review), and enforcement with associated administrative proceedings.

The following projected expenditure impact was prepared by the Department of Health Professions' Finance Office:

	FY97	FY98	FY99	FY00
Data Processing	7,000	5,500	7,000	8,000
Admin & Finance	1,000	1,500	2,000	2,500
Human Resources	1,000	1,100	1,200	1,300
Enforcement	800	1,000	1,500	1,800
Admin Proceedings	300	400	500	500
Attorney General	1,000	800	800	800
Bd of Health				
Professions	500	700	800	900
Personal Services	12,000	14,000	16,500	20,500
Contractual				
Services	2,000	4,000	4,500	5,000
Supplies	500	500	500	500
Continuous				
Charges	500	700	900	1,000
Equipment	100	100	100	100
TOTAL	26,700	30,300	36,300	42,900
BIENNIUM TOTAL		57,000		79,200

All costs to the agency are derived from fees paid by licensed marriage and family therapists.

C. Cost to local governments: Community service boards that have a policy to cover the costs of professional licensure for their employees may incur additional expenses for employees that wish to become licensed as marriage and family therapists. Since individuals in government settings are exempted by law from the licensure requirement, there would be little impetus for an agency to adopt this kind of policy.

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, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis

presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposal establishes a licensing program for marriage counselors and family therapists pursuant to Title 54.1 of Chapter 35 of the Code of Virginia.

Estimated Economic Impact. The Code of Virginia requires the establishment of a licensing program for marriage and family therapists. Given that, the question of the economic impact of this regulation boils down to whether the regulation implementing the Code does so in a way that is likely to produce the maximum benefits from the licensing program. Any fees, educational requirements, or testing requirements will tend to reduce the supply of service providers in a licensed occupation. That is a natural consequence of attempting to raise the level of quality of service provided.

In an ideal world we would choose optimal stringency of a licensing program to maximize the total benefits of the program, balancing the reduction in the number of providers against the improved quality of those remaining in the profession. In reality, we simply do not know enough to be able to find that single best arrangement. The Board of Professional Counselors and Marriage and Family Therapists appears to have carefully weighed the impact of the various requirements: fees, training, examinations, and standards of conduct. In each case, they have chosen what appears to be a balanced approach. There is no case where an element of the licensing program obviously violates the balance between the costs and benefits.

There is little data that could be used to suggest that any part of this regulation should be changed to improve its economic performance. It is important, however, for the Department of Health Professions to put in place a plan for collecting the information needed to evaluate the effectiveness of the various parts of this regulation so that any potential deficiencies may be corrected in a timely fashion.

Businesses and entities affected. Those primarily affected will be the therapists who must now obtain a license to practice in this field. Those who make use of the services should also expect to pay a somewhat higher price for the therapy.

Localities particularly affected. No localities are particularly affected by this regulation.

Projected impact on employment. There may be some decrease in the number of people who practice marriage and family therapy. This would be expected any time the costs of entering the profession are raised. However, what little data there is on this subject indicates that this affect should be small at least in the short term.

Effects on the use and value of private property. This regulation will not have any impact on the use and value of private property.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis: The agency is in agreement with the Economic Impact Analysis prepared by the Department of Planning and Budget.

Summary:

The proposed regulations establish standards of ethics, fees and criteria for the licensure of marriage and family therapists.

CHAPTER 50. REGULATIONS GOVERNING THE PRACTICE OF MARRIAGE AND FAMILY THERAPY.

18 VAC 115-50-10. Definitions.

A. *The following words and terms, when used in this chapter, shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia: (i) "board," (ii) "marriage and family therapy," (iii) "marriage and family therapist," and (iv) "practice of marriage and family therapy."*

B. *The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:*

"AAMFT" means the American Association for Marriage and Family Therapy.

"Internship" means a supervised, planned experience of at least one year, involving direct client contact with individuals, couples and families in a clinical setting in which the advanced student will observe, diagnose and treat, through the application of the principles, methods and techniques learned in training or educational settings.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the United States Secretary of Education as responsible for accrediting senior post-secondary institutions and training programs.

"Resident" means an individual who has submitted a supervisory contract to the board and has received board approval to provide clinical services in marriage and family therapy under supervision.

"Supervision" means an ongoing process in which a practitioner qualified to supervise in the discipline of marriage and family therapy provides regular, documented, face-to-face guidance, instruction and evaluation of the clinical skills and competencies of the person or persons being supervised.

18 VAC 115-50-20. Fees.

A. *The board has established fees for the following:*

1. Registration of supervision	\$20
2. Application processing	\$50
3. Biennial license renewal	\$75
4. Penalty for late renewal	\$10
5. Verification of license to another jurisdiction	\$10
6. Additional or replacement licenses	\$15
7. Additional or replacement wall certificates	\$15
8. Returned check	\$15

B. *Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.*

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C. Examination fees shall be paid directly to the examination service according to its requirements.

18 VAC 115-50-30. Application for licensure by examination.

Every applicant for examination for licensure by the board shall:

1. Meet the education and experience requirements prescribed in 18 VAC 115-50-50 and 18 VAC 115-50-60.
2. Submit to the board office in one package, the following items, not less than 90 days prior to the date of the examination:
 - a. A completed application;
 - b. The application fee prescribed in 18 VAC 115-50-20;
 - c. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18 VAC 115-50-60 along with documentation of the supervisor's out-of-state license where applicable;
 - d. Official transcript or transcripts in the original sealed envelope with the registrar's signature across the sealed envelope flap submitted from the appropriate institutions of higher education directly to the applicant, verifying satisfactory completion of the education requirements set forth in 18 VAC 115-50-50. Previously submitted transcripts for registration of supervision do not have to be resubmitted; and
 - e. Verification on a board-approved form that any out-of-state license, certification or registration is in good standing.

18 VAC 115-50-40. Application for licensure by endorsement.

Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;
2. The application fee prescribed in 18 VAC 115-50-20; and
3. Documentation of licensure as follows:
 - a. Documentation of a current marriage and family therapy license in good standing obtained by standards substantially equivalent to those outlined in 18 VAC 115-50-50, 18 VAC 115-50-60 and 18 VAC 115-50-70 as verified by the out-of-state licensing agency on a board-approved form;
 - b. If currently holding an unrestricted license as a professional counselor in Virginia, documentation of successful completion of the requirements set forth in 18 VAC 115-50-50 and 18 VAC 115-50-60; or
 - c. Within the first year of the effective date of these regulations (insert date), documentation of having met the requirements set forth in 18 VAC 115-50-80.

18 VAC 115-50-50. Education requirements for licensure examination.

The applicant shall have completed 60 semester hours or 90 quarter hours of graduate study in marriage and family therapy from a regionally accredited college or university, or a post-degree training institute accredited by the Commission on Accreditation for Marriage and Family Education, to include a graduate degree in marriage and family therapy or a related discipline which:

1. Was accredited by AAMFT prior to the applicant's graduation from the program; or
2. Consisted of a sequential integrated program in the following core areas with a minimum of nine semester hours or 12 quarter hours completed in each of core areas identified in subdivisions 2a and 2b of this section (suggested courses are listed in parentheses after each core area):
 - a. Marriage and family studies (marital and family development; family systems theory);
 - b. Marriage and family therapy (systemic therapeutic interventions and application of major theoretical approaches);
 - c. Human development (theories of counseling; psychotherapy techniques with individuals; human growth and lifespan development; personality theory; psychopathology; human sexuality; multicultural issues);
 - d. Professional studies (professional identity and function; ethical and legal issues);
 - e. Research (research methods; quantitative methods; statistics);
 - f. Assessment and treatment (appraisal, assessment and diagnostic procedures); and
 - g. Internship (minimum of one year, to include 300 hours of supervised direct client contact with individuals, couples and families).

18 VAC 115-50-60. Supervised clinical experience.

A. Residency requirements.

1. The applicant shall have completed at least two years of supervised post-graduate degree experience, representing no fewer than 4,000 hours of supervised work experience, to include 200 hours of face-to-face supervision with the supervisor in the practice of marriage and family therapy. Residents shall receive a minimum of one hour of face-to-face supervision for every 20 hours of supervised work experience. No more than 100 hours of the supervision may be acquired through group supervision, with the group consisting of no more than six residents. Two hours of group supervision shall be equivalent to one hour of individual supervision.
2. Of the 4,000 hours stipulated, at least 1,000 hours must be acquired in direct client contact of which 500 hours shall be with couples or families or both.

3. The supervised experience shall consist of practice in the core areas set forth in 18 VAC 115-50-50.

4. Supervised experience shall begin after the completion of a master's degree in marriage and family therapy or a related discipline as set forth in 18 VAC 115-50-50. However, internship hours completed by a graduate of an AAMFT-accredited program as part of the graduate degree may count toward the 4,000 hours of supervised experience.

5. A post-master's degree internship that meets the requirements of this subsection may count toward the required 4,000 hours of experience. However, all 4,000 hours shall be continuous and integrated and shall, without exception, be conducted under qualified registered supervision.

6. Residents shall not call themselves marriage and family therapists, solicit clients, bill for services rendered or in any way represent themselves as marriage and family therapists. During the residency, they may use their names, the initials of their degree and the title "Resident in Marriage and Family Therapy." Clients shall be informed in writing of the resident's status, along with the name, address and telephone number of the resident's supervisor.

7. Residents shall not engage in practice under supervision in any areas for which they do not have appropriate education.

8. Residents who do not become candidates for licensure after five years of supervised training shall submit an explanation to the board stating reasons the residency should be allowed to continue.

B. Supervisory requirements.

1. During the first three years after the effective date of these regulations (insert dates), any person who provides supervision for a resident in marriage and family therapy shall be licensed as a marriage and family therapist, professional counselor, clinical psychologist, clinical social worker or psychiatrist and shall be able to document on a board-approved form specific training in the supervision of marriage and family therapy.

2. Three years from the effective date of these regulations (insert dates), all supervision shall be provided by a licensed marriage and family therapist or a licensed professional counselor, clinical psychologist, clinical social worker or psychiatrist who meets the requirements of 18 VAC 115-50-50 and 18 VAC 115-50-60, and who is able to document on a board-approved form specific training in the supervision of marriage and family therapy.

3. Supervision by an individual whose relationship to the resident is deemed by the board to compromise the objectivity of the supervisor is prohibited.

4. The supervisor shall assume full responsibility for the clinical activities of residents as specified within the supervisory contract, for the duration of the supervised experience.

C. Registration of supervision.

Individuals registering supervision with the board shall submit in one package:

1. A completed Registration of Supervision form;

2. The registration fee set forth in 18 VAC 115-50-20; and

3. Official graduate transcript or transcripts in the original sealed envelope with the registrar's signature across the sealed envelope flap submitted from the appropriate institution of higher education directly to the applicant, verifying satisfactory completion of the education requirements set forth in 18 VAC 115-50-50.

18 VAC 115-50-70. General examination requirements.

A. All applicants for initial licensure shall pass an examination, with a passing score as determined by the board.

B. The examination shall concentrate on the core areas of marriage and family therapy set forth in subdivision A 2 of 18 VAC 115-50-50.

C. Approved applicants shall sit for the examination within two years from the initial notification date of approval. Failure to do so will result in the revocation of approval and obligate the applicant to file a new application for examination.

D. Applicants who fail the examination twice in succession shall document completion of 45 clock hours of additional education or training for each area of deficiency as reported in the examination results prior to obtaining board approval for reexamination.

18 VAC 115-50-80. Waiver of examination requirement.

Within one year of the effective date of these regulations (insert date), individuals who can document meeting the criteria in one of the following categories shall be licensed without examination:

1. Current and unrestricted professional counselor license in Virginia along with completion of four of the seven core coursework requirements outlined in 18 VAC 115-50-50.

2. Clinical membership in the AAMFT and:

a. A passing grade on the AAMFT examination as determined by the board; or

b. Ten years continuous practice in marriage and family therapy along with three letters attesting to competency to practice from professionals who are either licensed mental health professionals or AAMFT supervisors.

18 VAC 115-50-90. Biennial renewal of license.

A. All licensees who intend to continue to practice shall on or before the expiration date of the license submit to the board:

1. A license renewal application supplied by the board; and

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2. The renewal fee prescribed in 18 VAC 115-50-20.

B. Failure to receive a renewal notice from the board shall not relieve the license holder from the renewal requirement.

C. Licensees shall provide the board with official documentation of a legal name change and written notification of address changes within 90 days of such change.

18 VAC 115-50-100. Late renewal, reinstatement.

A. An individual whose license has expired may renew it within five years after its expiration date by paying the penalty fee prescribed in 18 VAC 115-50-20 as well as the license fee prescribed for each renewal period the license was not renewed.

B. An individual seeking reinstatement of a license five years or more after its expiration date must reapply according to the requirements of the regulations in effect at that time.

18 VAC 115-50-110. Standards of practice.

A. The protection of the public's health, safety and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all marriage and family therapists licensed by the board.

B. Persons licensed as marriage and family therapists shall:

1. Represent accurately their competence, education, training, experience and credentials, and practice only within the competency areas for which they are qualified by training or experience;
2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes and make appropriate referrals when it becomes clear that the client is not benefiting from the relationship;
3. Not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment;
4. When aware that the client is in a professional relationship with another mental health professional, in order to avoid confusion and conflict for the client, request a written release from the client to inform the other professional of the coexistent clinical relationship;
5. Disclose to clients all experimental methods of treatment, inform client of the risks and benefits of any such treatment, and ensure that the welfare of the client is not compromised in any experiment or research;
6. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;
7. Inform clients of the fees and billing arrangements, goals, techniques, procedures, limitations, potential risks and benefits of services to be performed;
8. Inform clients of the limits of confidentiality at the onset of the therapeutic relationship;

9. Not solicit clients, advertise or represent services to the public in a manner that is false, misleading, deceptive or fraudulent;

10. (i) Maintain client records securely, and inform all employees of the confidentiality requirements; (ii) disclose client records to others only with expressed written consent or as mandated by law; and (iii) ensure client confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients before (a) videotaping, (b) audiorecording, (c) permitting third party observation, or (d) using client records and clinical materials in teaching, writing, or public presentations. Client records shall be kept for a minimum of five years from the date of termination of the clinical relationship;

11. Avoid dual relationships with clients, former clients, residents, and supervisors that could compromise the well being or increase the risk of exploitation of clients or residents, or impair the resident's or supervisor's objectivity and professional judgment. This includes, but is not limited to, such activities as providing therapy to close friends, former sexual partners, employees or relatives, and engaging in business relationships with clients. Engaging in sexual intimacies with clients, former clients or current residents is strictly prohibited; and

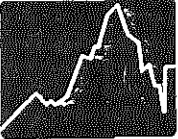
12. Report to the board known or suspected violations of the laws and regulations governing the practices of mental health professionals.

18 VAC 115-50-110. Disciplinary action.

In accordance with § 54.1-2400 of the Code of Virginia, the board may, after a hearing, revoke, suspend or decline to issue or renew a license or impose a fine in accordance with the following:

1. Conviction of a felony or of a misdemeanor involving moral turpitude;
2. Procurement of a license, certificate or registration by fraud or misrepresentation;
3. Conducting one's practice in such a manner as to make it a danger to the health and welfare of one's clients or the general public;
4. Practicing marriage and family therapy without reasonable skill and safety to clients by virtue of physical or emotional illness, abusive use of alcohol, drugs, narcotics, chemicals or any other hazardous substance or material;
5. Providing or offering services outside the demonstrable areas of competency; or
6. Violating or abetting another person in the violation of any provision of any statute applicable to the practice of marriage and family therapy, or any part or portion of this chapter.

FORM



DEPARTMENT OF HEALTH PROFESSIONS
 6606 West Broad Street, 4th Floor
 Richmond, Virginia 23230-1717

COMMONWEALTH OF VIRGINIA
BOARD OF PROFESSIONAL COUNSELORS
AND
MARRIAGE AND FAMILY THERAPISTS

**MARRIAGE AND FAMILY THERAPIST
LICENSURE APPLICATION**

I hereby make application for licensure to practice as a Marriage and Family Therapist in the Commonwealth of Virginia [] by examination [] by endorsement.
 The following evidence of my qualifications is submitted with a check or money order in the amount of \$50.00 made payable to the Treasurer of Virginia. The application fee is non-refundable.

INSTRUCTIONS	PLEASE TYPE OR PRINT	USE BLACK INK
1. Applicants must complete all sections. 2. Completed application should be mailed to the above address. 3. Application and supporting documents must be received no less than 90 days prior to the date of the written examination.		
I. GENERAL INFORMATION		
Name (Last, First, M.I., Suffix, Maiden Name)	Social Security Number	Date of Birth
Mailing Address (Street and/or Box Number, City, State, ZIP Code)	Home Telephone Number	
Business Name and Address (if different from above)	Business Telephone Number	
LICENSURE/CERTIFICATION - List all the states in which you now hold or have ever held an occupational license or certificate to practice as a mental health professional.		
STATE	LICENSE/CERTIFICATE NUMBER	ISSUE DATE

draft 9/23/96

ANSWER THE FOLLOWING QUESTIONS:

	YES	NO
1. Have you ever been denied the privilege of taking an occupational licensure or certification examination? If yes, state what type of occupational examination and where:	[]	[]
2. Have you ever had any disciplinary action taken against an occupational license to practice or are any such actions pending? If yes, explain in detail (use extra paper if necessary):	[]	[]
3. Have you ever been convicted of a violation of or pled nolo contendere to any federal, state, or local statute, regulation or ordinance or entered into any plea bargaining relating to a felony or misdemeanor? (Excluding traffic violations, except for driving under the influence.) If yes, explain in detail:	[]	[]
4. Have you ever been terminated or asked to withdraw from any health care facility, agency, or practice? If yes, provide an explanation on a separate sheet of paper.	[]	[]
5. Have you had any malpractice suits brought against you in the last 10 years? If yes, provide details on a separate sheet of paper.	[]	[]

The following statement must be executed by a Notary Public. This form is not valid unless properly notarized.

AFFIDAVIT
(To be completed before a notary public)

State of _____ County/City of _____

Name _____, being duly sworn, says that he/she is the person who is referred to in the foregoing application for licensure as a professional counselor in the Commonwealth of Virginia; that the statements herein contained are true in every respect, that he/she has complied with all requirements of the law; and that he/she has read and understands this affidavit.

Signature of Applicant

Subscribed to and sworn to before me this _____ day of _____, 19____.

My commission expires on _____.

Signature of Notary Public

SEAL

Proposed Regulations

BOARD OF PROFESSIONAL COUNSELORS AND
 MARRIAGE AND FAMILY THERAPISTS
 COURSES OUTLINE FORM

Name: _____

Name: _____

1. This listing will be utilized by the Board of Professional Counselors and Marriage and Family Therapists to cross-reference those courses being submitted with your transcripts.
2. All courses must be graduate level from a college or university approved by a regional accrediting agency or the Commission on Accreditation for Marriage and Family Therapy.
3. Do not list courses that are not directly related to marriage and family therapy.
4. If course title is not clearly indicative of Board content areas, attach college catalog description or course syllabi indicating that specific material was included.
5. If a course is utilized for more than one content area, do not duplicate credit hours. (Place an asterisk [*] in Credit Hours for second listing of course.)

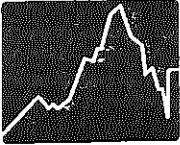
GRADUATE HOURS/COURSES SUBMITTED TOWARD LICENSURE

CONTENT AREA	COURSE #	TITLE	CREDIT HOURS		COLLEGE/ UNIVERSITY
			Sem.	Qtr.	
1. Marriage and Family Studies					
2. Marriage and Family Therapy					
3. Human Development					
4. Professional studies					
5. Assessment and Treatment					
6. Internship					

OTHER GRADUATE COURSES LISTED ON TRANSCRIPT(S)
 TO MEET THE MINIMUM OF 60 SEMESTER HOURS OR 90 QUARTER HOURS
 REQUIREMENT

COURSE #	TITLE	CREDIT HOURS		COLLEGE/UNIVERSITY
		Sem.	Qtr.	

rev. 8/96

	REGISTERED OFFICIAL 97 JUN 1993	COMMONWEALTH OF VIRGINIA BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717 (804) 662-9913
	VERIFICATION OF SUPERVISION FOR MARRIAGE AND FAMILY THERAPIST LICENSURE	

**VERIFICATION OF SUPERVISION FOR
MARRIAGE AND FAMILY THERAPIST LICENSURE**

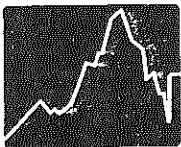
This form is to be filled out when supervision is completed.

Applicant's Name		Social Security Number
THE FOLLOWING SECTION IS TO BE COMPLETED BY THE SUPERVISOR		
Supervisor's Name		Professional Title
License Title(s)	License number(s) and expiration date(s) (If licensed outside Virginia, please submit License Verification Form to licensing state)	
Training in supervision of marriage and family therapy? Yes [] No [] Please submit copies of any certificates or diplomas to document this training.		
Business Name and Address		
Employment Position		
Applicant's position under your supervision	Length of time under your supervision: _____ Month Year to _____ Month Year	

draR 8/23/96

Total hours of resident's counseling experience: _____																				
Total hours of resident's direct client contact: _____																				
Total hours of direct contact with couples and/or families: _____																				
Total number of hours of individual, face-to-face supervision received by this applicant: _____																				
Total number of hours of group supervision received by this applicant: _____																				
SUPERVISION PROVIDED TO APPLICANT: Provide detailed information. For example: assess counseling skills; review treatment plans, monitor assessments, supervise family interventions and family groups.																				
Please circle your evaluation of the resident's competencies for each item below. These areas are outlined in Section 18 VAC 115-50-30 of the regulation: YES means the resident has satisfactorily demonstrated competencies in that area. NO means additional work is required to achieve competency NA means your supervision did not include this area																				
<table border="0"> <tr> <td>a. Marriage and family systems theory</td> <td>YES</td> <td>NO</td> <td>NA</td> </tr> <tr> <td>b. Marriage and family therapy therapeutic interventions</td> <td>YES</td> <td>NO</td> <td>NA</td> </tr> <tr> <td>c. Human development</td> <td>YES</td> <td>NO</td> <td>NA</td> </tr> <tr> <td>d. Professional ethics</td> <td>YES</td> <td>NO</td> <td>NA</td> </tr> <tr> <td>f. Assessment and treatment</td> <td>YES</td> <td>NO</td> <td>NA</td> </tr> </table>	a. Marriage and family systems theory	YES	NO	NA	b. Marriage and family therapy therapeutic interventions	YES	NO	NA	c. Human development	YES	NO	NA	d. Professional ethics	YES	NO	NA	f. Assessment and treatment	YES	NO	NA
a. Marriage and family systems theory	YES	NO	NA																	
b. Marriage and family therapy therapeutic interventions	YES	NO	NA																	
c. Human development	YES	NO	NA																	
d. Professional ethics	YES	NO	NA																	
f. Assessment and treatment	YES	NO	NA																	
In your opinion, is the applicant competent to practice under the license for which he or she has applied? Yes [] No []																				
If no, please explain:																				
Additional comments:																				
_____ Supervisor's Signature	_____ Date																			

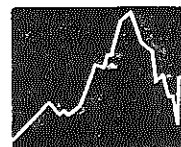
rev. 6/93

	COMMONWEALTH OF VIRGINIA BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS
	Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717 (804) 662-9912

LICENSURE VERIFICATION OF OUT-OF-STATE SUPERVISOR

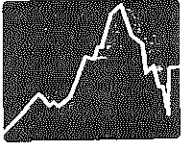
TO BE COMPLETED BY VIRGINIA APPLICANT	
Virginia Applicant's Name: _____	
Name of Supervisor: _____	
Title and Number of Supervisor's License: _____	
TO BE COMPLETED BY OUT-OF-STATE BOARD	
Please complete this form and return it directly to the Virginia Board of Professional Counselors and Marriage and Family Therapists at the above address. Thank you.	
License Number of supervisor named above: _____	
Title of License: _____	
If license is M.D., is psychiatry a specialty? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Date of initial license: _____	
Expiration date of license: _____	
Is individual licensed in good standing? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Has there ever been any disciplinary action taken against the individual's license? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please give full particulars on the reverse side of this form.	
I certify that the information given is correct.	
SEAL	_____ Authorized Licensure Official
	_____ Jurisdiction State
	_____ Date

rev 6/95

	COMMONWEALTH OF VIRGINIA BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS
	Department of Health Professions 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717 (804) 662-9912

LICENSURE VERIFICATION OF APPLICANT

TO BE COMPLETED BY VIRGINIA APPLICANT	
Name: _____	License Number: _____
Address: _____	
TO BE COMPLETED BY STATE BOARD	
Please complete this form and return it directly to the Virginia Board of Professional Counselors and Marriage and Family Therapists at the above address. Thank you.	
Title of License: _____	License Number: _____
Issue Date: _____	Expiration Date: _____
By Examination _____ By Endorsement _____	By Waiver _____ By Reciprocity _____
Date of Examination: _____	Type of Written Examination: _____
Cut-Off Score _____ Applicant's Score _____	
Hours of post-degree supervised experience required _____	Hours of face-to-face supervision required _____
Hours of client contact required _____	Hours contact with couples and families _____
Has the license ever been surrendered, suspended, or revoked? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please give full particulars on the reverse side of this form.	
Certification by the authorized Licensure Official of the State Board of _____	
State of _____	
	I certify that the information is correct.
SEAL	_____ Authorized Licensure Official
	_____ Jurisdiction State

	COMMONWEALTH OF VIRGINIA BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS
	DEPARTMENT OF HEALTH PROFESSIONS 6606 West Broad Street, 4th Floor Richmond, Virginia 23230-1717 (804) 662-7328

**REGISTRATION OF SUPERVISION FOR
MARRIAGE AND FAMILY THERAPIST LICENSURE**

FEES: \$20.00 Initial Registration (each supervisor) Make all checks payable to THE TREASURER OF VIRGINIA - Registration fees are NON-REFUNDABLE		
CHECK ONE: <input type="checkbox"/> Initial Registration <input type="checkbox"/> Add Supervisor <input type="checkbox"/> Change Supervisor		
RESIDENT INFORMATION (Please type or print clearly)		
Name (Last, First, M.I., Suffix, Maiden Name)	Social Security Number	Date of Birth
Mailing Address (Street and/or Box Number, City, State, ZIP Code)		Home Telephone Number
Business Name and Address		Business Telephone Number
SUPERVISOR INFORMATION (Please type or print clearly)		
Name (Last, First, M.I., Suffix, Maiden Name)	Social Security Number	Date of Birth
Mailing Address (Street and/or Box Number, City, State, ZIP Code)		Home Telephone Number
Business Name and Address		Business Telephone Number
Type of License/Certification	License or Certificate Number	State
Supervisor must complete attached experience and education form A or B		

NATURE OF SUPERVISION	
Supervisory setting (Name of Institution, Agency): _____	
Hours of individual and/or group supervision planned PER WEEK: Individual _____ Group _____ <i>Review Section 18 VAC 115-50-50 of the regulations which outlines the experience requirement.</i>	
Nature of services to be rendered by the resident: _____	
Nature of services to be rendered by the supervisor: _____	
SUPERVISORY AGREEMENT	
I, _____, agree to provide supervision as described within this agreement for a (Name of Supervisor)	
TOTAL of _____ individual hours and/or _____ group hours. <i>(Review Section 18 VAC 115-50-50 of the regulations which outlines the experience requirement.)</i> I agree to supervise _____ in (Name of Resident)	
accordance with the regulations of the Virginia Board of Professional Counselors and Marriage and Family Therapists governing the Practice of Marriage and Family Therapy. I also agree to report the performance of the resident on a form provided by the Board at the conclusion of the supervised experience.	
I, _____, agree to present myself for supervision for the number of hours designated in this (Name of Resident)	
agreement. I understand _____ is responsible for my professional activities during the (Name of Supervisor)	
time I am working under his/her supervision.	
DATE SUPERVISION BEGAN/WILL BEGIN: _____	
_____ Signature of Supervisor	_____ Signature of Resident
Date: _____	
NOTE: 1. RESIDENTS MUST SUBMIT A REGISTRATION OF SUPERVISION FORM FOR EACH INDIVIDUAL PROVIDING SUPERVISION.	
2. THIS FORM WILL NOT BE REVIEWED BY THE BOARD UNTIL OFFICIAL TRANSCRIPTS ARE RECEIVED DOCUMENTING COMPLETION OF GRADUATE DEGREE.	

Draft 9/96

APPLICANT'S NAME: _____

REGISTER OF REGULATIONS
07 JAN 28 PM 2:02

SUPERVISOR'S EXPERIENCE AND EDUCATION

1. Training in marriage and family therapy supervision

Certificate Number	Issue Date

2. Education and Experience in marriage and family therapy (complete only if not licensed as a marriage and family therapist).

- | | |
|---|--|
| <input type="checkbox"/> Licensed Professional Counselor
<input type="checkbox"/> Licensed Psychologist
<input type="checkbox"/> Medical Doctor | <input type="checkbox"/> Licensed Clinical Psychologist
<input type="checkbox"/> Licensed Clinical Social Worker
<input type="checkbox"/> Registered Nurse |
|---|--|

WITH:

- A. A graduate degree in marriage and family therapy or a related field that met the requirements outlined in 18 VAC 15-50-50 of the regulation.
- B. 4,000 hours supervised work experience that met the requirements outlined in 18 VAC 15-50-50 of the regulation.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE COMMONWEALTH OF VIRGINIA THAT THE FOREGOING IS TRUE AND CORRECT.

Supervisor's Signature

Date

VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: 9 VAC 20-160-10 et seq. Voluntary Remediation Regulations.

Statutory Authority: § 10.1-1429.1 of the Code of Virginia.

Public Hearing Date: March 19, 1997 - 10 a.m. (Richmond)
March 20, 1997 - 1:30 p.m. (Roanoke)

Public comments may be submitted until April 18, 1997.
(See Calendar of Events section for additional information)

Basis: Article 4.1 (§ 10.1-1429.1 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, contains the laws governing the voluntary remediation of contaminated property. Section 10.1-1429.1 mandates that the Virginia Waste Management Board (board) promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes or petroleum where the remediation is not clearly mandated by the United States Environmental Protection Agency, the Department of Environmental Quality (department), or a court pursuant to Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived.

Purpose: The purpose of the board's regulations is to protect human health and the environment by encouraging the voluntary remediation of sites.

Substance: The regulations provide procedures to minimize delay and expense of remediation to be followed by a person volunteering to remediate a release and by the department in processing applications and guidance on remediation. The regulations provide for the following: methodologies to establish site-specific risk-based cleanup standards; to provide for expeditious issuance of permits; a requirement for registration fees; and issuance of a certification of satisfactory completion of remediation. The issuance of a certification of satisfactory completion of remediation grants immunity to the participant from an enforcement action under this chapter, the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia, or other applicable law. The regulations authorize the department to seek temporary access to private and public property not owned by the person conducting the voluntary remediation if it is reasonably necessary to the voluntary remediation process.

Issues: Prior to July 1, 1995, the department was administering a voluntary remediation program (VRP) under the authority of the Solid Waste Management Regulations. The VRP legislation requires the board to promulgate regulations for voluntary remediation by July 1997, and authorizes the department to implement the VRP on a case-by-case basis until the regulations are promulgated. One advantage for the public is that since these regulations apply only to sites where remediation is not mandatory, it is likely

that remediation of contaminated property which is undertaken pursuant to these regulations would not occur otherwise. Moreover, in comparison to enforcement-driven remediation programs, these regulations minimize the delay and expense of remediation. Once the remediation is completed, a certification of satisfactory completion of remediation is issued by the director and is recorded by the participant with the land records for the site. The certification provides immunity from civil enforcement action.

These proposed regulations present no perceived disadvantages for the public. This conclusion is based on the fact that remediation of contaminated sites will reduce risks to human health and the environment, and on the fact that the enforcement immunity provided by the certification of satisfactory completion of remediation is void if a site in the future poses an unacceptable risk to human health or the environment.

Estimated Impact: Any remediation of contaminated property which is undertaken voluntarily pursuant to these regulations would not likely occur otherwise, at least not as quickly, and persons who voluntarily remediate property have determined that the benefits (e.g., risk reduction, increased lender confidence, enhanced property values, limitation on liability, immunity from enforcement action with respect to the contamination) outweigh the costs (e.g., expense of remediation, physical disturbance of the site, imposition of usage restrictions if necessary, and uncertainties of time to completion).

In accordance with the Virginia Waste Management Act, the board, through the director, is currently administering a voluntary remediation program on a case-by-case basis. Based on correlation with existing risk/cost estimates otherwise available, the department estimates that about half of the approximately 50 sites currently active in the program may require substantive remediation to achieve applicable risk-based standards; the total estimated cost to remediate these sites is about \$15 million. The department estimates there are about 250 other existing sites which, with time and with additional incentives like those expected under Brownfields initiatives (economic incentives for redevelopment of existing industrial sites), may be candidates for the voluntary remediation program. Based on the best available risk/cost data, the department estimates that about 100 of these sites may require remediation to achieve applicable risk-based standards, and estimates the total remedial cost to be about \$60 million. Combining current and potential sites, the cost for voluntary remediation of 150 sites would be approximately \$75 million or \$500,000 per site. These costs will be borne by the volunteering parties.

As indicated above, the risk reduction, minimized expense, and other benefits corresponding to these remedial activities are not likely to occur, and certainly not as quickly, without these regulations. In the alternative, without voluntary remediation regulations, the cumulative cost of site assessment, risk assessment and prioritization of candidate sites -- processes estimated to cost from \$25,000 to \$50,000 per site -- could be significantly higher, and the majority would probably be borne directly by the Commonwealth. The total cost for the 150 known VRP candidate sites would range from \$3 million to \$8 million. These assessment costs do not

Proposed Regulations

include remediation, which, as mentioned above, will cost an additional estimated \$500,000 per site, or \$75 million total. Moreover, without the alternative of voluntary remediation, some candidate sites may be subject to Superfund status. The average cost for a U.S. EPA-managed Superfund cleanup is \$30 million to \$50 million. With a 10% state match fund, the cost to the Commonwealth for assessment and remediation of such sites would typically be \$330,000 to \$550,000 per site; plus as mentioned, the added cost to taxpayers for Superfund cleanups, typically ranging from \$30 million to \$50 million per site for a Superfund cleanup. In Virginia, roughly 6.0% of the CERCLIS-listed sites are of Superfund caliber. Applying this ratio to the 150 known VRP candidate sites suggests that perhaps nine of the VRP candidate sites might otherwise be Superfund sites. The cost for remediating these sites would range from \$270 million to \$450 million.

As expressed in the Virginia Waste Management Act, the effect of the regulations should be to minimize delay and expense of remediation. The regulations provide for a registration fee which would support the technical review and implementation of the program and would not impact the department. The fees cover all costs to the department.

There are no localities particularly affected, as these proposed regulations are applicable statewide.

Alternative Approaches Considered: An alternative approach considered was of promulgating no regulations. However, § 10.1-1429.1 et seq. of the Code of Virginia mandates that the board shall promulgate the regulations to be in effect by July 1, 1997.

The board in considering two variations of the proposed regulation so that the board may receive comments on both alternatives as set out for the public to view. In 9 VAC 20-160-110 the board is proposing the recording of the certificate with local land records only when the certificate contains conditions for restrictions or maintenance of engineering control. A variation under consideration is to always require the recording of the certificate with local land records. In 9 VAC 20-160-120 the board is proposing to mandate public notice of the voluntary remediation project; however, it is also considering not requiring the notice. The board requests public comments on both of these issues during the public comment period.

Applicable Federal Requirements: Currently, there are no federal requirements for the voluntary remediation of releases of hazardous substances, hazardous wastes, solid wastes or petroleum where the remediation is not clearly mandated by the United States Environmental Protection Agency, the department, or a court pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 62.1-1400 et seq.), the State Water Control Law (§ 62.1-144.2 et seq.), or other applicable statutory or common law. However, if in the future these sites are reevaluated under CERCLA, they may have a higher priority for listing on the National Priorities List (NPL).

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, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. This proposed regulation establishes a program for allowing those with an economic interest in contaminated land to voluntarily abate the contamination. Successful completion of the abatement will provide current and future owners of the property with immunity from certain enforcement actions. The rule establishes (i) criteria for determining whether a site is eligible for participation in the voluntary remediation program, (ii) standards for the level of abatement required for remediation to be considered successful, and (iii) application and reporting procedures. The proposal also specifies public participation requirements and the level of immunity granted upon successful completion of abatement.

Estimated Economic Impact

State regulation of the disposal of hazardous wastes on private land can be justified on both spatial and temporal grounds. Waste disposed of on one piece of property may contaminate the air, public waters, adjacent properties, and local groundwater. Even if physical contamination is not present, there is good evidence that proximity to waste disposal sites often lowers property values. Whether this is for reasons of health or aesthetics, it may represent a real loss of wealth to the owners.¹

For subsequent owners of the contaminated property, prior contamination may be difficult to evaluate. The prospect that land being considered for purchase may contain hidden contamination places a substantial burden on property transactions. This burden is especially great on property once used for industrial purposes. The economic value of maintaining the liquidity of the market for real property is very large. Contamination of one site by hard to detect wastes places a burden on all other property since buyers of other parcels must pay for evaluation of sites before a purchase can be completed. In the end, this lowers the value of other property by raising transaction costs. Thus, a significant expenditure on prevention and abatement of contamination by hazardous wastes may be justified to protect the market for real property.

Some of the risk to property values due to contamination are due to the regulation of waste disposal. Under current law, the subsequent owner of a contaminated site may be held

¹ When reductions in value are due to misinformation or to incorrect assessment of probabilities, then the problem is not one of "externality" but of information. In this case, the appropriate government action, if any, may be quite different.

responsible for the costs of cleanup even if the contamination was not evident at the time of purchase. Since civil suits to recover these costs are often expensive or even impossible to pursue, firms interested in buying a piece of land may be dissuaded from doing so not only because of the contamination but also because of the prospect of future enforcement actions. This risk will affect all property with a history that indicates the possibility of contamination, in addition to actually contaminated sites.

As noted previously, actual contamination of a site will lower its property value. There will be many cases where the property is sufficiently valuable and the costs of abatement sufficiently low that abatement will be profitable for the owner. In the absence of regulations governing the cleanup of contaminated sites, market forces would lead the owners to clean up the site to maximize its value net of cleanup costs. However, under current rules, the current or subsequent owners of the property still face the possibility of an enforcement action which lowers the value of the abatement option. It is also true that, as one would expect, for a given level of abatement, the cleanup will be more expensive if it is carried out subject to an enforcement action rather than voluntarily by a private party with an economic interest in the outcome.

Removing the regulation is not an appropriate option because the level of cleanup chosen by a profit-maximizing owner will not take full account of the costs the wastes impose on other property owners and the public. In the absence of the regulations, an owner would often choose a level of abatement less than what would be economically optimal.²

We are left, then, with a need to balance the benefits of eliminating any unnecessary regulatory risk with the benefits of ensuring that the abatement level chosen takes into account the costs external to the contaminated parcel itself. The voluntary abatement program proposed in this regulation attempts to find the balance between the two conflicting goals.

Net economic benefits to participants in the program. Because this program is voluntary, we are justified in assuming that any firms participating in the program expect to see a positive net benefit from that participation. Estimating the exact magnitude of those benefits would be tricky and expensive for a number of reasons. First, economic benefits to firms would be difficult to measure. Some of this benefit would be captured in the change in the property value of the contaminated site after abatement. Not only do we not know the loss in property value due to contamination, but we also do not know how much of that loss would be recovered after abatement.

Firms may also receive intangible benefits such as favorable publicity for their efforts to clean up contaminated waste

sites. Also, it is not possible to say at this time what level of abatement these firms might be subjected to in the future. For example, firms may anticipate that abatement may be required at a site sometime in the future. Cleaning up the contamination voluntarily in advance of such a requirement may significantly reduce clean-up costs.

The Department of Environmental Quality has made some rough estimates of the cost of cleanup. While useful, these estimates should not be taken as a measure of the net benefits of the regulation. To calculate the net benefits for the property owner we would calculate the gross benefits of increases in property values plus the value of any other benefits such as valuable public relations. From this we subtract the expected actual costs of cleanup. If the regulation is responsible for a reduction in expected cleanup costs (due to, say, cleaning up in anticipation of being listed as a Superfund site in the future) then this cost reduction must be added to the net benefits of the regulation. DEQ estimates that it would expect about nine sites to fall into this category. Since abatement of Superfund sites in Virginia usually costs in the range of 10-20 million dollars each, there is room for significant cost savings by avoiding Superfund remediation requirements.

The issue of calculating net benefits to Virginia is somewhat complicated by the Superfund remediation funding mechanism. Most Virginia Superfund site remediations are paid for by the responsible parties. For a significant minority, 90% of the costs of abatement are paid for by a grant from the federal Superfund program. For such sites, the voluntary remediation program would probably not result in net savings to the Commonwealth.

Costs and benefits to other parties. In the previous section, the observation that the decision to participate in the program is voluntary led to the conclusion that, for the participants, the voluntary remediation represents an unambiguous net economic gain. Since the disposal and subsequent remediation of hazardous waste on private land will frequently have an affect on resources other than the contaminated land, we need to inquire about the economic consequences of the program for other people in the Commonwealth.

The most obvious impact of this proposal is that more waste sites will be cleaned up sooner than under existing regulations. This reduces or eliminates risks to neighboring landowners, air quality, surface waters and groundwater. Some of these benefits will be captured in improved property values near the site and some will accrue to the public through a general reduction in environmental risk. There could also be some benefit from reduced transaction costs in real estate transfers if the increased rate of cleanup is perceived by prospective buyers as lowering the risk that they would be subject to regulatory action based on hidden contamination of a given parcel of land. The lower the risk involved in purchasing a piece of property, the less prospective buyers will invest in insurance against possible future losses due to hidden contamination.

One characteristic common to all of these effects is that they are extremely difficult to quantify with any accuracy. Even a broad range of values would be quite speculative. One reason for this is that we still do not fully understand the

² It is worth noting that, if recovering civil damages in a nuisance action is costless, then the regulation would not be necessary because the owner of the contaminated land would have to take into account the costs the wastes impose on others. However, it is well documented that in the case of hazardous waste contamination, common law nuisance actions are often extremely expensive or even impossible to pursue due to the very difficult problems of proving causality.

Proposed Regulations

physical and biological consequences of land contamination of hazardous wastes. Different wastes will have different effects and the effects will depend critically on environmental factors that vary widely from site to site. Beyond that, we have only a very tentative understanding of how markets value these various risks.

In aggregate, then, this regulation should provide a net benefit to neighboring landowners and to the public as well, although the magnitude of the benefit is hard to measure.

This proposal may also impose some costs on neighbors and the public. These costs may arise because when remediating a parcel of contaminated land, the owner does not have direct economic incentive to take into account the interests of the other parties that may be affected. While civil actions for damages could theoretically correct much of this problem, in the case of land contaminated with hazardous wastes, the problems of proof raise the transaction costs to levels that may blunt or eliminate the effectiveness of civil suits in internalizing to the landowners the costs of their own actions on other parties.

Public participation: As noted, neighboring landowners and the public may have a legitimate interest to protect when a landowner chooses to participate in the voluntary remediation program. Additionally, neighbors may have information important to DEQ in assessing the proposed remediation plan and whether remediation has been successful. Toward this end, section 120 of the proposed rule includes a requirement for public participation. Two aspects of this public participation requirement merit comment.

The public participation provisions require that a legal notice of the remediation proposal be published once in a local newspaper and that the public has thirty days in which to comment on the proposal. It may be questioned whether the publication of one legal notice is sufficient protection for the potentially large economic interests that neighboring landowners may have in a voluntary remediation plan. Many landowners may not know that they are adjacent to a remediation site, if so, they may have little reason to believe that legal notices in the local paper would affect them.

Given this, it would seem prudent to consider whether it would be appropriate to require the party proposing a remediation plan to make a "reasonable effort" to notify any adjacent landowners of the proposed remediation plan. For most sites, making a reasonable effort to specifically notify adjacent landowners would probably cost only a few hundred dollars or less. Such a requirement could greatly improve the credibility of the remediation process with nearby communities and property owners. Presumably, most neighboring landowners will be happy to have the nearby hazardous waste site remediated. However, those who have useful information about the remediation plan or economic interests that might be adversely affected, will be more likely to have their interests considered in the plan. For the number of sites currently expected to participate in this plan, the total increased cost of more complete notice requirements would probably be less than \$50,000 over the life of the program.

Paragraph C of section 120 provides that summaries of any public comments should be provided to DEQ by the

applicant. Since it may often be true that the interests of the commentator are adverse to those of the applicant, the applicant has a clear economic incentive to summarize the comments to DEQ in a light most favorable to itself. While it is impossible to say exactly what impact this would have on summaries of any public content, it would not be unreasonable for commentators with interests adverse to the applicant to be suspicious about whether their concerns were being transmitted effectively to DEQ. One simple way to eliminate this problem would be to require that copies of all comments be forwarded to DEQ along with the summaries. This would add only a small increment to application costs but could add greatly to the credibility of the process and in the acceptance of the voluntary remediation program.

Even with these changes, the VRP may impose costs on some parties not part of the remediation plan. For sites on the National Priority List (NPL) there are provisions for community relations plans and technical assistance grants. If a site is remediated voluntarily and thereby avoids NPL status, these provisions do not apply. It is beyond the scope of this analysis to determine whether the community relations plans and technical assistance grant provisions of the Superfund law have a positive net economic value. However, that these provisions do not apply to VRP sites does represent a loss of value to those who would have benefited from the community relations plans and technical assistance grants.

Notice to future owners: One of the key problems presented by contaminated land is that, generally, the contamination will persist beyond the tenure of the current owner. That future owners might be subjected to regulatory and health risks due to contamination that is hard to detect serves as one of the primary justifications for regulating land contamination. As discussed earlier, the risks associated with purchasing possibly contaminated land could have a large negative economic impact including the reduction of property values well beyond the borders of the contaminated parcel. Reducing these risks serves as one of the main reasons for the voluntary remediation proposal.

One decision that must be made in designing a voluntary remediation regulation is how much notice to provide to prospective purchasers of a parcel of land that the land is a remediated hazardous waste site. Paragraph C of section 110 of the proposal establishes the following rule:

C. The certificate shall be issued by the director and if use restriction and or engineering controls are specified in the certificate, the certificate shall be recorded by the participant with the land records for the site in the office of the clerk of the circuit court for the jurisdiction in which the site is located. If the certificate does not include any use restriction or engineering control, recordation of the certificate is at the option of the participant. The immunity accorded by the certification shall apply to the participant and shall run with the land identified as the site.

The rule states that as long as use restrictions or continued engineering controls are not required to meet the risk standards required for successful remediation, then the remediation certificate need not be recorded with land title. Requiring the recording of the certificate in the case of use restrictions and engineering controls is clearly justified. The question remains whether such a requirement should also

exist for the other sites remediated under this program. To analyze this question requires a consideration of the standards for successful voluntary remediation of contaminated sites.

In paragraph 90 B 1 a the regulation establishes the standard for carcinogenic contaminants:

- a. For a site with carcinogenic contaminants, the remediation standard shall not result in a cumulative upper-bound lifetime cancer risk which exceeds the range of 1×10^{-4} to 1×10^{-6} , unless the use of a Maximum Contaminant Level (MCL) for groundwater, that has been promulgated under § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141), results in a cumulative risk greater than 1×10^{-4} .

First, it is unclear what is intended by the language "exceeds the range of 1×10^{-4} to 1×10^{-6} ." In this context, the only way to exceed this range is to exceed the risk of 10^{-4} . If the intent is that participants should strive for 10^{-6} if it is economically practicable, then this should be explicitly stated. As written, the standard states that an upper-bound lifetime cancer risk of 10^{-4} satisfies the regulatory standard. The argument here is not that one of these risk levels is more appropriate than the other, only that the language should be clear about what is actually required.

Once a landowner remediates the waste site to a risk standard of 10^{-4} (or 1 in 10,000), no recording of the remediation is required.³ As the property changes hands, information about the previous and current contamination of the property will be less and less available to the prospective purchasers. If the information is not available from the previous owner, then it may be very difficult to find. Over a fairly short period of time, information about site history and status will no longer be readily available.

The question we ask here is whether that information should be made available at the cost of recording the certificate at the time of granting. The way to answer this is to ask whether any significant fraction of prospective property buyers would decide not to buy the property on the basis of this information. If the answer to that question is yes, then making the information unavailable would result in property owners exposing themselves to greater risk than they wanted or prospective buyers would make defensive decisions by either making defensive expenditures or avoiding whole classes of property to reduce risks to the preferred level. Either way, there would be a net cost to the economy of rendering the information expensive to discover.

For a number of reasons, people may not wish to subject themselves to the risks of purchasing a remediated waste site. There are many examples of people making significant expenditures to avoid a 1 in 10,000 risk of cancer.⁴ On the other hand, many people take much greater risks. What is very clear from this is that even people who are well-informed

about relative risks of activities have clear preferences over what risks are acceptable and what risks are not. These preferences often weight heavily the type of risk in assessing whether a given set of odds are acceptable.

There are other reasons why people may not wish to purchase a site that has residual contamination from hazardous wastes. Some people may have aesthetic objections. Others may question whether the level of risk is what is claimed in the certification. The preferences that people have over this matter are probably very diverse and are simply taken as given in examining the economic value of recording certification with title.

It may be argued that having a record of completion recorded with title will reduce the value of the property and, hence, reduce the value of remediation. That property values are indeed responsive to notice of remediation would confirm that the notice is of value to the market. If remediation can only be justified on the basis of property values inflated by the absence of information about the quality of the property, then it is questionable whether the remediation can be justified on economic grounds at all.⁵ A general recordation requirement would also provide appropriate incentives to avoid contamination in the future since the landowner would have to take into account the full market reaction to the contamination. The commercial value of remediating contaminated property should be determined by a market with full information about the qualities of that property.

The cost of recording the completion of remediation is probably well under \$100. The value of this information to the real estate market is probably much greater than this.

DEQ processing costs: The legislation authorizing DEQ to implement this program directs it to charge a fee to "defray" the administrative costs. There is no explicit requirement that the program be completely paid for by fees. In fact, a statutory limit of \$5,000 seems to recognize that such a limit may be binding sometimes. DEQ reports that, for smaller sites, DEQ will be able to process most of them for less than the \$5,000 limit. For the larger or more contaminated sites, DEQ has used General Fund money and is looking into ways to use EPA grant money to cover some of the expenses.

Any DEQ resources over the \$5,000 limit does represent an implicit subsidy to the participants in the program. However, the amount is not large, and it appears to be less than the level of subsidy that characterizes other DEQ permitting programs. DEQ indicates that the fee limit does not place a limit on the resources that will be used to process a voluntary remediation plan. That helps ensure that the limit will not force a reduction in the quality of DEQ's oversight as the seriousness of the contamination increases.

Businesses and entities affected. The businesses primarily affected will be the owners of the approximately 150 probable candidate remediation sites. There will also be a generally positive impact on neighboring landowners whose property values will tend to rise as remediation is completed.

³ That is, unless use restrictions or engineering controls are needed to achieve that level of risk.

⁴ See generally, Glickman, Theodore and Michael Gough, *Readings in Risk*, Washington, DC, Resources for the Future, 1990.

⁵ This statement assumes that in the case discussed there are no significant effects on other property or un-owned air and water resources.

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Individuals using the air and water near remediation sites will benefit from the early cleanup of contaminated areas.

Localities particularly affected. While there will be some concentration of remediation sites in areas with more industrial production, this regulation will apply to sites throughout the Commonwealth. No localities will experience a disproportionate share of the costs or the benefits of the regulations. In addition, the largest share of both the costs and the benefits will be local. There will not be any significant transfer of value from one part of the Commonwealth to another.

Projected impact on employment. The impact of this regulation on employment is not known. Some Superfund cleanup sites attract a large amount of federal money that would constitute a net gain in income and employment in Virginia. However, balanced against this effect is the increased voluntary cleanup that will occur once this regulation is in place. Employment in voluntary cleanup is not necessarily a net gain in employment. Those employed in these cleanups will most likely be drawn from employment elsewhere in Virginia.

Thus, the increase in employment at voluntary remediation sites could conceivably result in a net loss in employment depending on the labor intensity of the alternative uses of the funds invested in the cleanup operation. Once a site is remediated, the land is available for production. This will increase employment at that site, but, again, it is not known whether the voluntary remediation itself will result in a net gain or loss of employment compared to what would have happened if its absence. The data needed for resolving this uncertainty is simply not available. In all probability, however, the net impact will be small.

Effects on the use and value of private property. Since this is a voluntary program, remediation would not likely be carried out unless the party undertaking the cleanup felt that the benefits of doing so would outweigh the costs. When the net benefits from owning a parcel of land increase, those benefits will be reflected in the market price of the land. We can state with some certainty that this regulation will result in a net increase in the value of land with sites eligible for voluntary remediation.

There is an additional benefit to private property. It is well known that proximity to hazardous waste sites can depress the value of surrounding parcels of land. Remediation of the waste sites, when it is done in a way that is consistent with the property interests of nearby property owners, will increase the value of the remediation site and surrounding property as well. All of this increase is a gain in wealth for the property owners. Naturally, it is only a net gain insofar as the gains exceed the costs of remediation. The voluntariness of the program ensures that the net change in wealth will be positive.

Assuming that the interests of neighboring land owners are protected by the regulations, there will be a net increase in the value of private property. As already discussed, this argues for giving some attention to how the interests of neighboring land owners are protected in these regulations.

Summary of Analysis. This proposed regulation will allow those with an ownership interest in contaminated property to

undertake a voluntary remediation of the wastes on the property. Once completion is successfully completed and certified, the current and future owners of the property will have a limited but valuable shield against enforcement actions with respect to the contaminants and conditions known at the time of remediation. This rule will reduce the cost of remediating certain properties and will encourage early abatement. There will probably be significant environmental benefits to having the contaminated sites remediated quickly and efficiently. Overall the rule has the potential to have a large net benefit for Virginia.

Two small changes could add to the benefits of the proposal. First, it may be worthwhile to require that applicants make a reasonable effort to notify neighboring landowners by more effective means than a single legal notice in the local paper and to forward actual copies of any comments to DEQ in addition to the summaries required here. Second, there is a strong economic argument to be made for requiring that all remediation certifications be recorded with title so that the real estate market can properly value the remediation efforts. The additional information will ensure that the market value of the property fully reflects the quality of the remediation work carried out.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department of Planning and Budget (DPB) has reviewed the proposed Voluntary Remediation Regulations proposed by the Virginia Waste Management Board and the Department of Environmental Quality (DEQ). DPB's analysis finds that the rule has the potential for a large benefit for Virginia's economy. The analysis also includes two important recommendations that are discussed below:

DPB Recommendation No. 1: Voluntary Remediation Program (VRP) participants should be required to make a reasonable effort to notify neighboring landowners by more than the single legal notice in the local paper, as required by the proposed rule, and to forward copies of any comments to DEQ in addition to the summary of comments required in the proposed rule.

Response: There are various perspectives regarding the public participation to be required by the regulations, including competing concerns about the need for neighboring property owners to be given adequate notice of and opportunity to comment on VRP activities and concerns about the burden such requirements may place on a VRP participant. For USEPA to formally acknowledge that a successful VRP cleanup satisfies federal requirements, some level of public participation will be necessary. It is good that DPB has raised the issue for discussion by the public. DPB's advice and the public comments presented during the public comment period will be thoroughly considered by the board in reaching a decision on the proposed regulations.

DPB Recommendation No. 2: The recordation requirement in the proposed rule extends only to those certifications which include a use restriction on the subject property as a basis for issuance of the certification. DPB recommends that all certifications of satisfactory completion of remediation be required to be recorded with the title to the property so that the real estate market can properly value the remediation efforts.

Response: The remediation efforts associated with real property can be seen to either add value to the property or to add a stigma to a piece of property. Considerable advice from the public during the comment period is both sought and expected. As with the first issue, DPB's advice and the public comments presented during the comment period will be thoroughly considered by the board in reaching a decision on the proposed regulations.

Summary:

The proposed regulations establish standards and procedures for persons conducting voluntary remediation at sites where remediation has not been clearly mandated by the Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where the jurisdiction of those statutes has been waived. The regulations provide:

1. Methodologies to determine site specific risk-based remediation standards;
2. Procedures that minimize delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the department in the processing of submissions and overseeing remediation;
3. The issuance of certifications of satisfactory completion of remediation, based on then present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the department determines that no further action is required;
4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and
5. Collection of registration fees to defray the actual reasonable costs of the voluntary remediation program expended at the site not to exceed the lesser of \$5,000 or 1.0% of the cost of the remediation.

CHAPTER 160.

VOLUNTARY REMEDIATION REGULATIONS.

9 VAC 20-160-10. Definitions.

"Act" means the Voluntary Remediation Act (§ 10.1-1429.1 et seq. of the Code of Virginia).

"Agreement" means the Voluntary Remediation Agreement entered into between the department and a Voluntary Remediation Program participant.

"Authorized agent" means any person who is authorized in writing to fulfill the requirements of this program.

"Baseline risk assessment" means the portion of a risk assessment which addresses the potential adverse human health and environmental effects under both current and

planned future conditions caused by the presence of a contaminant in the absence of any control, remediation, or mitigation measures.

"Carcinogen" means a chemical classification for the purpose of risk assessment as an agent that is known or suspected to cause cancer in humans, including but not limited to a known or likely human carcinogen or a probable or possible human carcinogen under an EPA weight-of-evidence classification system.

"Contaminant" means any man-made or man-induced alteration of the chemical, physical or biological integrity of soils, sediments, air and surface water or groundwater including, but not limited to, such alterations caused by any hazardous substance (as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601(14)), hazardous waste (as defined in 9 VAC 20-60-10), solid waste (as defined in 9 VAC 20-80-10), petroleum (as defined in Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law, or natural gas.

"Completion" means fulfillment of the commitment agreed to by the participant as part of this program.

"Cost of remediation" means all costs incurred by the participant pursuant to activities necessary for completion of voluntary remediation at the site, based on an estimate of the net present value (NPV) of the combined costs of the site investigation, report development, remedial system installation, operation and maintenance, and all other costs associated with the remedial action.

"Department" means the Department of Environmental Quality of the Commonwealth of Virginia or its successor agency.

"Director" means the Director of the Department of Environmental Quality or such other person to whom the director has delegated authority.

"Engineering controls" means remedial actions directed toward containing or controlling the migration of contaminants through the environment. These include, but are not limited to, stormwater conveyance systems, slurry walls, liner systems, caps, leachate collection systems and groundwater recovery systems.

"Exposure assessment model" means a conceptual model of the physical site conditions, contaminants of concern by media, release mechanisms, environmental fate and transport, and potential receptors, and the interaction of each as it relates to site risk. The model identifies the universe of on-site and off-site current and reasonably anticipated future human and environmental exposure pathways and receptors. The purpose of the model is to design and focus site investigations and to assist in the determination of site response action objectives.

"Hazard index (HI)" means the sum of more than one hazard quotient for multiple contaminants or multiple exposure pathways or both. The HI is calculated separately for chronic, subchronic, and shorter duration exposures.

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"Hazard quotient" means the ratio of a single contaminant exposure level over a specified time period to a reference dose for that contaminant derived from a similar period.

"Institutional controls" means legal or contractual restrictions on property use that remain effective after remediation is completed and are used to meet remediation standards. The term may include, but is not limited to, deed and water use restrictions.

"Noncarcinogen" means a chemical classification for the purposes of risk assessment as an agent for which there is either inadequate toxicologic data or is not likely to be a carcinogen based on an EPA weight-of-evidence classification system.

"Operator" means the person currently responsible for the overall operations at a site, or any person responsible for operations at a site at the time of, or following, the release.

"Owner" means any person currently owning or holding legal or equitable title or possessory interest in a property, including the Commonwealth of Virginia, or a political subdivision thereof, including title or control of a property conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means, or any person who previously owned the property.

"Participant" means a person who has received confirmation of eligibility and has remitted payment of registration fee.

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

"Program" means the Virginia Voluntary Remediation Program.

"Property" means a parcel of land defined by the boundaries in the deed.

"Reference dose" means an estimate of a daily exposure level for the human population, including sensitive subpopulations, that is likely to be without an appreciable risk of deleterious effects during a lifetime.

"Registration fee" means the fee paid to enroll in the Voluntary Remediation Program, based on 1.0% of the total cost of remediation at a site, not to exceed the statutory maximum.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any contaminant into the environment.

"Remediation" means actions taken to cleanup, mitigate, correct, abate, minimize, eliminate, control and contain or prevent a release of a contaminant into the environment in order to protect human health and the environment, including actions to investigate, study or assess any actual or suspected release.

"Remediation standard" means the concentration of a contaminant and applicable controls, that are protective of human health and the environment.

"Restricted use" means any use other than residential.

"Risk" means the probability that a contaminant will cause an adverse effect in exposed humans or to the environment.

"Risk assessment" means the process used to determine the risk posed by contaminants released into the environment. Elements include identification of the contaminants present in the environmental media, assessment of exposure and exposure pathways, assessment of the toxicity of the contaminants present at the site, characterization of human health risks, and characterization of the impacts or risks to the environment.

"Site" means any property or portion thereof, as agreed to and defined by the participant and the department, which contains or may contain contaminants being addressed under this program.

"Termination" means the formal discontinuation of participation in the Voluntary Remediation Program.

"Unrestricted use" means the designation of acceptable future use for a site at which the remediation standards, based on either background or standard residential exposure factors, have been attained throughout the site in all media.

"Upper-bound lifetime cancer risk level" means a conservative estimate of the probability of one excess cancer occurrence in a given number of exposed individuals. For example, a risk level of 1×10^{-6} equates to one additional cancer occurrence in one million exposed individuals, beyond the number of occurrences that would otherwise occur. Similarly, a risk level of 1×10^{-4} equates to one additional cancer occurrence in 10,000 exposed individuals. Upper-bound lifetime cancer risk level is based on an assumption of continuous, lifetime exposure and is likely to overestimate "true risk."

9 VAC 20-160-20. Purpose; applicability; compliance with other regulations.

A. The purpose of this chapter is to establish standards and procedures pertaining to the eligibility, enrollment, reporting, remediation, and termination criteria for the Virginia Voluntary Remediation Program in order to protect human health and the environment.

B. This chapter shall apply to all persons who elect to and are eligible to participate in the Virginia Voluntary Remediation Program.

C. Participation in the program does not relieve a participant from the obligation to comply with all applicable federal, state and local laws, ordinances and regulations related to the conduct of investigation and remedial activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) undertaken by the participant pursuant to this chapter.

9 VAC 20-160-30. Eligibility criteria.

A. Candidate sites shall meet eligibility criteria as defined in this section.

B. Any persons who own, operate, have a security interest in or enter into a contract for the purchase or use of contaminated property who wish to voluntarily remediate

releases of contaminants may participate in the program. Any person who is an authorized agent of any of the parties identified in this subsection may participate in the program.

C. Sites are eligible for participation in the program if (i) remediation has not been clearly mandated by the United States Environmental Protection Agency, the department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 USC § 9601 et seq.), the Resource Conservation and Recovery Act (42 USC § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), or other applicable statutory or common law; or (ii) jurisdiction of the statutes listed in clause (i) has been waived.

A site on which an eligible party has completed remediation of a release is potentially eligible for the program if the actions can be documented in a way which are equivalent to the requirements for prospective remediation, and provided they can meet applicable remediation standards.

Petroleum or oil releases not mandated for remediation under Articles 9 (§ 62.1-44.34:8 et seq.) and 11 (§ 62.1-44.34:14 et seq.) of the Virginia State Water Control Law may be eligible for participation in the program.

Where an applicant raises a genuine issue based on documented evidence as to the applicability of regulatory programs in subsection D of this section, the site may be eligible for the program. Such evidence may include a demonstration that:

1. It is not clear whether the release involved a waste material or a virgin material;
2. It is not clear that the release occurred after the relevant regulations became effective; or
3. It is not clear that the release occurred at a regulated unit.

D. For the purposes of this chapter, remediation has been clearly mandated if any of the following conditions exist, unless jurisdiction for such mandate has been waived:

1. Remediation of the release is the subject of a permit issued by the U.S. Environmental Protection Agency or the department, a pending or existing closure plan, a pending or existing administrative order, a pending or existing court order, a pending or existing consent order, or the site is on the National Priorities List;
2. The site containing the release is subject to requirements of the Virginia Hazardous Waste Management Regulations (9 VAC 20-60-10 et seq.);
3. The site containing the release constitutes an open dump or unpermitted landfill under Part IV (9 VAC 20-80-170 et seq.) of the Virginia Solid Waste Management Regulations;
4. The director determines that the release poses an imminent and substantial threat to human health or the environment; or

5. Remediation of the release is otherwise the subject of a response action required by local, state, or federal law or regulation.

9 VAC 20-160-40. Application for participation.

A. The application for participation in the Voluntary Remediation Program shall, at a minimum, provide the elements listed below.

1. A notice of intent to participate in the program;
2. A statement of the applicant's eligibility to participate in the program (e.g., proof of ownership, security interest, etc.).
3. For authorized agents, a letter of authorization from an eligible party;
4. A legal description of the site;
5. The general operational history of the site;
6. A general description of information known to or ascertainable by the applicant pertaining to (i) the nature and extent of any contamination; and (ii) past or present releases, both at the site and immediately contiguous to the site.
7. A discussion of the potential jurisdiction of other existing environmental regulatory programs, or documentation of a waiver thereof; and
8. A certification by the applicant that to the best of his knowledge, that all the information as set forth in this subsection is true and accurate.

B. Within 45 working days, the director will review the application to verify that (i) the application is complete and (ii) the applicant and the site meet the eligibility criteria set forth in 9 VAC 20-160-30.

If the director makes a tentative decision to reject the application, then he shall notify the applicant that the application has been rejected and provide an explanation of the reasons for the rejection. Within 30 working days the applicant may (i) submit additional information to correct the inadequacies of the rejected application or (ii) accept the rejection.

9 VAC 20-160-50. Agreement.

Within 90 working days of promulgation of these regulations [insert date], persons conducting remediation pursuant to a voluntary remediation agreement with the department entered into prior to the promulgation of these regulations shall notify the department in writing as to whether they wish to complete the remediation in accordance with such an agreement or in accordance with these regulations. If the participant elects to complete the voluntary remediation in accordance with this chapter, such election will result in termination of the agreement.

9 VAC 20-160-60. Registration fee.

A. In accordance with § 10.1-1429.1 A 5 of the Code of Virginia, the applicant shall submit a registration fee to defray the cost of the voluntary remediation program.

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B. The registration fee will be at least 1.0% of the estimated cost of the remediation at the site, not to exceed the statutory maximum. Payment will be required after eligibility has been verified by the department and prior to technical review of submittals pursuant to 9 VAC 20-160-80. Payment shall be made payable to the Commonwealth of Virginia and remitted to Virginia Department of Environmental Quality, P.O. Box 10150, Richmond, VA 23240.

C. To determine the appropriate registration fee, the applicant may provide a remediation cost estimate of the total anticipated cost based upon net present value of remediation at the site.

Remediation costs shall be based on site investigation activities; report development; remedial system installation, operation and maintenance; and all other costs associated with participating in the program and addressing the contaminants of concern at the subject site.

Departmental concurrence with a remediation cost estimate does not constitute approval of the remedial approach assumed in the cost estimate.

D. Upon submittal of the demonstration of completion (see 9 VAC 20-160-70 A 2), the participant will provide the actual total cost of the remediation, and the director will calculate any balance adjustments to be made to the initial registration fee. Any negative balance owed to the department shall be paid by the participant prior to the issuance of a certification of satisfactory completion of remediation. Any costs to be refunded shall be remitted by the agency with issuance of the certificate of satisfactory completion of remediation.

E. As an alternative to providing a remedial cost estimate at the time of application, the participant may elect to remit the statutory maximum registration fee. The department will refund any balance owed to the participant after receiving the actual total cost of remediation submitted with the demonstration of completion and issuance of the certification of satisfactory completion of remediation. If no remedial cost summary is provided within 30 working days of the participant's receipt of the department's concurrence with the demonstration of completion, the participant will have waived the right to a refund.

9 VAC 20-160-70. Work to be performed.

A. The Voluntary Remediation Report serves as the master document for all documentation pertaining to remedial activities at the site. Each component of the report shall be submitted by the participant to the department. As various components are received, they shall be inserted into this report by the participant, and the report will serve as the documentation archive for the site. It shall consist of a site characterization/remedial action work plan and, when applicable, a demonstration of completion.

1. Site characterization/remedial action plan. This component of the report shall consist of the following:

a. The site characterization component of the submittal should contain a delineation of the nature and extent of releases to all media, an evaluation of the risks to human health and the environment posed by the release, a proposed set of remediation standards

consistent with 9 VAC 20-160-90 that are protective of human health and the environment, and a recommended remedial action to achieve the proposed objectives; or a justification that no action is necessary.

b. The remedial action plan component of the submittal shall propose the activities, schedule, any permits required to initiate and complete the remedial action and specific design plans for implementing a remedial action that will achieve the remediation standards specified in the site characterization.

c. Documentation of the public notice in accordance with 9 VAC 20-160-120. Such documentation shall include a written summary of comments received as well as the applicant's responses to the comments that were received during the public comment period.

2. Demonstration of completion.

a. This closure component of the report should, when applicable, include a detailed summary of the performance of the remedial action implemented at the site, the total cost of the remediation, and, as necessary, confirmational sampling results demonstrating that the established site-specific remedial objectives have been achieved, or other criteria for completion of remediation have been satisfied.

b. As part of the demonstration of completion, the participant shall certify compliance with applicable regulations pertaining to activities performed at the site pursuant to this chapter.

B. It is the participant's responsibility to ensure that the conduct of investigation and remediation activities (e.g., waste management and disposal, erosion and sedimentation controls, air emission controls, and activities that impact wetlands and other sensitive ecological habitats) comply with all applicable and appropriate regulations.

C. All work shall be performed in accordance with Test Methods for Evaluating Solid Waste, USEPA SW-846, revised December 1987.

9 VAC 20-160-80. Review of submittals.

A. Upon receipt of submittals, the director will review and evaluate the submittals. The director may request additional information in order to render a decision and move the participant towards expeditious issuance of the certification of satisfactory completion of remediation.

B. The director may expedite, as appropriate, issuance of any permits required to initiate and complete a voluntary remediation. The director shall, within 120 working days of a complete submittal, expedite issuance of such permit in accordance with applicable regulations.

C. The participant shall submit a final voluntary remediation report (consisting of the site characterization, the remedial action work plan, and the demonstration of completion). Upon receipt of a complete Voluntary Remediation Report, the director will make a determination regarding the issuance of the certification of satisfactory completion of remediation to the participant. The determination shall be made pursuant to the

Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).

9 VAC 20-160-90. Remediation standards.

A. The establishment of remediation standards shall consider impacts to human health and the environment.

B. Remediation standards shall be based upon a risk assessment of the site reflecting the current and future use scenarios.

1. A site shall be deemed to have met the unrestricted use standard if the remediation standards, based on either background or standard residential exposure factors, have been attained throughout the site and in all media. Attainment of this standard will allow the site to be given an unrestricted use classification. No remediation techniques or controls which require ongoing management (such as institutional or engineering controls) may be employed to achieve this standard.

2. For sites that do not achieve the unrestricted use standard, restrictions on site use shall be applied. Restrictions shall include, but not be limited to, institutional and engineering controls. The restrictions imposed upon a site will be media-specific and may vary according to site-specific conditions. Future use with restrictions may range from residential to industrial. All restrictions on use necessary to attain this standard shall be described in the certification of satisfactory completion of remediation as provided in 9 VAC 20-160-110.

C. Remediation standards shall be developed after appropriate site characterization data have been gathered as provided in 9 VAC 20-160-70. Remediation standards may be derived from the three-tiered approach provided in subdivision 2 of this subsection. Any tier or combination of tiers may be applied to establish remediation standards for contaminants present at a given site, with consideration of site use restrictions specified in subsection B of this section. The standard set forth in subdivision 1 of this subsection shall apply to the risk-based remediation standards determined through Tiers II and III.

1. General criteria.

a. For a site with carcinogenic contaminants, the remediation standard shall not result in a cumulative upper-bound lifetime cancer risk which exceeds the range of 1×10^{-4} to 1×10^{-6} , unless the use of a Maximum Contaminant Level (MCL) for groundwater that has been promulgated under 42 USC § 300g-1 of the Safe Drinking Water Act and the National Primary Drinking Water Regulations (40 CFR Part 141) results in a cumulative risk greater than 1×10^{-4} .

b. For noncarcinogens, the hazard index shall not exceed a combined value of 1.0.

c. For unrestricted future use, where a contaminant of concern has an MCL, the MCL for that contaminant shall be the remediation standard.

d. For unrestricted future use, where a contaminant of concern exists for which surface water quality criteria (WQC) have been adopted by the State Water Control

Board for a specific use, the WQC will be the remediation standard for the specified use, as appropriate.

e. If the concentration for a contaminant is below the Practical Quantitation Limit (PQL), generally as published in Test Methods for Evaluating Solid Waste, USEPA SW-846, revised December 1987, the PQL may be considered as the remediation standard.

2. Tier-based criteria.

a. Under Tier I the participant shall collect appropriate samples from background and from the area of contamination for all media of concern.

(1) Background levels shall be determined from an unimpacted portion of the property or an unimpacted portion of a nearby property.

(2) The participant shall compare concentrations from the area of contamination against background concentrations. If the concentrations from the area of contamination exceed established background levels, the participant may consider Tier II or Tier III methodologies, as applicable.

b. Tier II generic remediation standards are based on published, media-specific values, derived using conservative default assumptions. If the remediation standard determined using Tier II is below the PQL, the PQL may be used. Use of Tier II shall be limited to the following:

(1) Soil remediation standards shall be determined as the lower of either the ingestion or cross-media transfer values, according to the following:

(a) For ingestion, values provided in the EPA Region III Risk-Based Concentration Table current at the time of assessment.

i. For carcinogens, the soil ingestion concentration for each contaminant, reflecting an individual upper-bound lifetime cancer risk of 1×10^{-6} .

ii. For noncarcinogens, $1/10$ (i.e., Hazard Quotient = 0.1) of the soil ingestion concentration, to account for multiple systemic toxicants at the site.

(b) For cross-media transfer, values derived from the USEPA Soil Screening Guidance (OSWER, April 1996, Document 9355.4-23, PB 96-963505, EPA/540/R-96/018) shall be used as follows:

i. The soil screening level for transfer to groundwater, with adjustment to a hazard quotient of 0.1 for noncarcinogens, if the value is not based on an MCL; or

ii. The soil screening level for transfer to air, with adjustment to a hazard quotient of 0.1 for noncarcinogens, using default residential exposure assumptions.

(2) Groundwater.

Proposed Regulations

(a) Tier II generic groundwater remediation standards shall be based on (i) federal MCLs or action levels for lead and copper as established by the Safe Drinking Water Act (42 USC § 300 (f)) and the National Primary Drinking Water Regulations (40 CFR Part 141) or (ii) tap water ingestion values provided in the EPA Region III Risk-Based Concentration Table current at the time of the assessment.

For contaminants that do not have values available under clause (i) or (ii) above, a remediation standard shall be calculated using criteria set forth under Tier III.

At sites where ecological receptors are of concern, the participant shall develop a remediation standard using criteria set forth in Tier III.

c. Tier III remediation standards are based upon a site-specific risk assessment considering site-specific assumptions about current and potential exposure scenarios for the population(s) of concern, including ecological receptors, and characteristics of the affected media.

(1) In developing Tier III remediation standards, the participant shall consider, for all applicable media, the default exposure assumptions specified in Risk Assessment Guidance for Superfund, Volume 1, Human Health Evaluation Manual (Part A), Interim Final, USEPA, December 1989 (EPA/540/1-89/002), unless the participant demonstrates that other assumptions are reasonable and applicable for the specific conditions and proposed use of the site.

(2) Changes in contaminant concentrations over time and distance may be considered through fate and transport modeling if residual contamination exists above levels acceptable for unrestricted use. The future use of such a site shall be restricted or monitored, as appropriate.

(3) In the determination of Tier III standards, the participant may utilize the Risk Exposure and Analysis Modeling System (REAMS). However, other models may be used, provided that the participant provides a satisfactory demonstration of its applicability.

(4) For sites where ecological receptors are of concern, remediation standards shall be based on an ecological risk assessment.

d. If a remediation standard according to a specific tier is not achieved, the participant may:

(1) Perform remediation to attain the remediation standard; or

(2) Determine a revised remediation standard based on the criteria of a different tier.

9 VAC 20-160-100. Termination.

A. Participation in the program shall conclude:

1. When the director concurs with all work submitted, as set forth in 9 VAC 20-160-80, and the participant satisfactorily demonstrates attainment of the remediation standards. If warranted by the site-specific risk assessment, it may not be necessary to conduct remedial action in order to attain remediation standards.

2. When evaluation of new information obtained during participation in the program results in a determination by the director that the site is ineligible for participation in the program. If such a determination is made, the director shall notify the participant that participation has been terminated and provide an explanation of the reasons for the determination. Within 30 working days, the participant may submit additional information, or accept the director's determination.

3. Upon 30 working days written notice of termination by either party.

B. The department shall be entitled to receive and use, upon request, copies of any and all information developed by or on behalf of the participant as a result of work performed pursuant to participation in the program, after application has been made to the program.

C. Termination of participation in the program by any method, except as provided in subdivision A 1 of this section, shall result in no refund of any registration fee submitted.

9 VAC 20-160-110. Certification of satisfactory completion of remediation.

A. Upon termination of program participation according to 9 VAC 20-160-100 A 1, the director shall issue a certification of satisfactory completion of remediation (certificate).

B. The issuance of the certificate shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), the Virginia State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Virginia Air Pollution Control Law (§ 10.1-1300 et seq. of the Code of Virginia), or other applicable Virginia law.

C. The certificate shall be issued by the director and, if use restriction and or engineering controls are specified in the certificate, the certificate shall be recorded by the participant with the land records for the site in the office of the clerk of the circuit court for the jurisdiction in which the site is located. If the certificate does not include any use restriction or engineering control recordation of the certificate is at the option of the participant. The immunity accorded by the certification shall apply to the participant and shall run with the land identified as the site.

D. The immunity granted by issuance of the certificate shall be limited to site conditions at the time of issuance as those conditions are described in the Voluntary Remediation Report and is conditioned upon completeness and accuracy of that information. Specific limitations of the certificate shall be enumerated in the certificate. The immunity granted by the certificate will be dependent upon the identification of the nature and extent of contamination as presented in the Voluntary Remediation Report.

1. If the Voluntary Remediation Report identifies the nature and extent of contamination both on and off the property boundaries, and, based on a site-specific risk assessment, there is no unacceptable risk to human health or the environment on or off the property boundaries in accordance with 9 VAC 20-160-90, the immunity afforded by the certificate will apply to the enforcement actions described in subsection B of this section that could otherwise be taken to address conditions both on and off the property boundaries.

2. If the Voluntary Remediation Report identifies the nature and extent of contamination within the property boundaries but does not identify the nature and extent of contamination beyond the property boundaries, the immunity granted by the certificate will apply only to the enforcement actions described in subsection B of this section that could otherwise be taken to address conditions within the property boundaries and the immunity afforded by the certificate will not apply to any enforcement actions that may be necessary for conditions beyond the property boundaries.

E. The certificate shall specify the site conditions for which immunity is being accorded, including, but not limited to:

1. A summary of the information that was considered;
2. Any restrictions on future use;
3. Any required institutional controls; and
4. Any required engineering controls and their maintenance.

F. The certificate may be revoked by the director at any time in the event that contamination posing an unacceptable risk to human health or the environment is rediscovered on site or is found to have migrated off-site or in the event that it is discovered that the certificate was based on information provided by the participant that was materially false, inaccurate or misleading. By issuance of the certificate the department does not waive sovereign immunity.

9 VAC 20-160-120. Public participation

A. Any proposed voluntary remediation or completed voluntary remediation shall be given public notice paid for by the applicant, by publication once in a newspaper of general circulation in the area affected by the voluntary remediation prior to submittal of the site characterization/remedial action plan to the department. The participant shall allow 30 working days following the date of the public notice for interested persons to submit written comments on the voluntary remediation proposal.

B. The contents of the public notice of a voluntary remediation shall include:

1. Name and address of the applicant and the location of the proposed voluntary remediation;
2. A brief description of the proposed remediation;
3. The address and telephone number of a specific person familiar with the proposed remediation from whom

information regarding the proposed voluntary remediation may be obtained; and

4. A brief description of how to submit comments.

C. The site characterization report/remedial action work plan submitted to the department by the applicant shall provide documentation of the public notice as well as a written summary of comments received and the applicant's responses to the comments that were received.

9 VAC 20-160-130. Regulatory evaluation.

A. Within three years after the effective date of this chapter [insert date], the department shall perform analysis on this chapter and provide the Waste Management Board with a report on the results. The analysis shall include:

1. The purpose and need for the chapter;
2. Alternatives which would achieve the stated purpose of this chapter in a less burdensome and intrusive manner;
3. An assessment of the effectiveness of this chapter;
4. The results of a regulatory review of current state and federal statutory and regulatory requirements, including identification and justification of this chapter's requirements which exceed federal requirements; and
5. The results of a review as to whether this chapter is clearly written and easily understandable by affected parties.

B. Upon review of the department's analysis, the Waste Management Board shall confirm the need to (i) continue this chapter without amendment; (ii) repeal this chapter; or (iii) amend this chapter.

C. The Waste Management Board will authorize the department to initiate the applicable regulatory process, and to carry out the decision of the Waste Management Board, if amendment or repeal of this chapter is warranted.

DOCUMENTS INCORPORATED BY REFERENCE

Test Methods for Evaluating Solid Waste, Third Edition (1986) with Revision I, PB 88-239223, revised December 1987.

U.S. EPA Soil Screening Guidance, EPA/540/F-95/041, Publication 93554-14FSA, PB96-963501, July 1996.

Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation Manual (Part A) Interim Final, EPA/540/1-89/002, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1989.

Risk Assessment Guidance for Superfund: Volume I - Human Health Evaluation Manual (Part B, Development of Risk-based Preliminary Remediation Goals) Interim, Publication 9285.7-01B, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, December 1991.

Risk-Based Concentration Table, Region III, United States Environmental Protection Agency, January-June 1996.

VA.R. Doc. No. R97-245; Filed January 23, 1997, 1:02 p.m.

Proposed Regulations

STATE WATER CONTROL BOARD

Title of Regulation: 9 VAC 25-194-10 et seq. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Car Wash Facilities.

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

Public Hearing Date:

March 18, 1997 - 2 p.m. (Abingdon)
March 19, 1997 - 11 a.m. (Harrisonburg)
March 20, 1997 - 2 p.m. (Glen Allen)

Public comments may be submitted until April 18, 1997.
(See Calendar of Events section
for additional information)

Basis: The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.15(5) authorizes the State Water Control Board (board) to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the board to adopt rules governing the procedures of the board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the board to adopt such regulations as it deems necessary to enforce the general water quality management program, § 62.1-44.15(14) authorizes the board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC § 1251 et seq.) authorizes states to administer the National Pollutant Discharge Elimination System (NPDES) permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. Environmental Protection Agency (EPA) to administer a Virginia Pollutant Discharge Elimination System (VPDES) permit program. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a VPDES General Permit Program.

Purpose: This proposed regulatory action is needed in order to establish appropriate and necessary permitting requirements for discharges of wastewater from car wash operations. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the VPDES permit program. Further, it will provide for the protection of the health, safety and welfare of the citizens of the Commonwealth by allowing the Department of Environmental Quality to devote more resources to the permitting of facilities with discharges of greater potential for adverse water quality impacts.

This proposed regulatory action will set forth standard language for effluent limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program.

Substance: A VPDES general permit is issued by the state for a category of point source discharges to surface waters instead of to an individual discharge. Anyone who fits into the category covered by the general permit and who agrees to abide by its conditions may apply for coverage under it instead of applying for an individual VPDES permit. The type of systems to be covered include wastewater generated from the manual, automatic, or self service washing of vehicles including cars, vans, and pick-up trucks designated by Standard Industrial Classification Code 7542. Also, it includes auto dealer preparation and detailing, and fleet vehicle washing. This permit does not cover facilities that wash or steam clean engines and heavy equipment, or tractor-trailer and bus washing or tanker cleaning.

The proposed general permit consists of limitations and monitoring requirements on discharges to surface waters for the following parameters: flow, estimate gpd; pH, 6.0 min, 9.0 max; total suspended solids, 60 mg/l max; and oil and grease, 15 mg/l max. The monitoring frequency varies depending upon the average flow rate. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.

Estimated Impacts: There are 56 establishments currently holding individual VPDES permits in this industrial classification which may qualify for this proposed general permit. There may be other facilities which are currently operating without a permit which would be covered by this general permit. Under the current individual permit system, each applicant must pay \$2,200 to obtain a permit as well as approximately \$325 for the public notice in a local newspaper. Coverage under the general permit would reduce the paperwork, time and expense of obtaining an individual permit for the owners and operators in this category. The application fee for general permit coverage is \$200 and DEQ pays for the public notice costs when the regulation is adopted. It is anticipated that the amount of monitoring required under the general permit will be less than under individual permits. Additionally, adoption of this proposed regulation would reduce the manpower needed by the Department of Environmental Quality (DEQ) for permitting these discharges. Small business that qualify for the general permit will benefit as discussed above.

Affected Locality: The regulation will be applicable statewide and will not affect any one locality disproportionately.

Issues: An advantage of a general VPDES permit is that it reduces the application costs and paperwork burden for the dischargers. It also reduces the administrative time and burden for DEQ in processing individual permits. Thus, it improves the administrative efficiency of the department's permitting program and allows staff resources to be concentrated on individual VPDES permits which have more potential for impacting water quality. No disadvantages have been identified.

There is a concern for extending the coverage of vehicle washing activities to include businesses that wash their own heavy equipment, or oversized vehicles.

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 Section 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, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. The analysis presented below represents DPB's best estimate of these economic impacts.

Summary of the proposed regulation. Under Section 402 of the federal Clean Water Act and Section 62.1-44.2 et seq. of the Code of Virginia, Virginia is authorized to administer the National Pollutant Discharge Elimination System (NPDES) permit program for discharges into or adjacent to State waters. The Virginia Pollutant Discharge Elimination System (VPDES) permit program is administered under a memorandum of understanding with the U.S. Environmental Protection Agency (EPA).

In many circumstances, federal and state law require the issuance of an individual VPDES permit to each establishment discharging wastes into state waters. However, the memorandum of understanding with EPA allows for the issuance, under certain conditions, of a generic VPDES permit to cover a category of discharger. Once the generic permit is issued, then qualifying facilities do not need to apply for a separate VPDES permit. Rather, they only need to certify that they meet the conditions set out in the general permit. The specific and general permits are the only alternatives available under the federal Clean Water Act.

It is the purpose of these regulations to replace the current, establishment-specific permit system for car wash facilities with a general permit system. The Department of Environmental Quality (DEQ) suggests that the change will result in lower administrative and compliance costs without causing any material changes in water quality.

Estimated Economic Impact. This proposal will greatly reduce the firms' costs of obtaining a VPDES permit and DEQ's costs of granting the permits. DEQ estimates that there are 56 firms currently holding VPDES permits in this industry. These firms pay a \$2,200 permit fee every five years. At the current rates, the fees only cover about 10% of DEQ's cost of processing the permit.¹ The taxpayers must pay for the remainder. Given the five year life of the permits, the individual permits would cost this industry a total of \$28,280 per year on average and taxpayers would cover \$282,800. Under the general permit, fees would only add up to \$2,240 per year for the industry, and DEQ indicates that this is a reasonable estimate of the costs of processing applications for coverage under general permits.

Firms will also save some money on the costs of developing the information necessary for the permit application. While reliable estimates of application costs were not available, DEQ indicates that firms will realize some savings.

At the same time, this regulation is not expected to have any significant impact on water quality. The idea behind general permits is that a group of firms are all subject to the same standards and conditions under individual permits and, hence, there is no loss to water quality in establishing the permit standards one time and then automatically applying them to all firms that meet the requirements for the standard set of permit conditions. Such is the case for the 56 sources covered under this general permit. Thus, we would expect no change in water quality resulting from the shift towards a general permit for the car wash facilities.

We conclude, then, that this regulation is likely to save the car wash industry something in excess of \$26,000 per year. Taxpayers could save as much as \$280,000 per year. Since there is not expected to be any impact on water quality, this \$306,000 in annual savings is a net gain to Virginia's economy.

Businesses and entities affected. The businesses affected are the 56 sources that will be covered by the general permit.

Localities particularly affected. No localities will be particularly affected by this regulation.

Projected impact on employment. There will be no measurable change in employment due to this regulation. There is no reason to believe that the resources freed up by this proposal will result in any net change in the level of employment.

Effects on the use and value of private property. Any possible increase in the value of affected firms due to these cost savings would be too small to measure.

Agency's Response to Department of Planning and Budget's Economic Impact Analysis:

DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER DIVISION
OFFICE OF WATER PERMIT SUPPORT
MEMORANDUM

P. O. Box 10009 Richmond, VA 23240-0009

SUBJECT: 9 VAC 25-194-10 et seq. - General VPDES Permit for Car Wash Facilities

TO: File

FROM: George Cosby

DATE: November 26, 1996

COPIES: R. Ayers

On November 7, 1997, I received the attached Economic Impact Analysis prepared by the Department of Planning and Budget (DPB) for the subject proposed general permit regulation.

After reviewing this document, I believe DPB has made a fair and accurate assessment for the economic impact of the proposed regulation. I agree with their analysis and have no further comments.

¹ Personal conversation with Richard Ayers, DEQ.

Proposed Regulations

Summary:

The State Water Control Board proposes to issue a general VPDES permit for car wash discharges. This proposed regulatory action will set forth standard language for effluent limitations and monitoring requirements necessary to regulate this category of discharges under the VPDES permit program. The general permit consists of limitations and monitoring requirements on discharges to surface waters for the following parameters: flow, estimate gpd; pH, 6.0 min, 9.0 max; total suspended solids, 60 mg/l max; and oil and grease, 15 mg/l max. The monitoring frequency varies depending upon the average flow rate. The regulation also sets forth the minimum information requirements for all requests for coverage under the general permit.

CHAPTER 194.

GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR CAR WASH FACILITIES.

9 VAC 25-194-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9 VAC 25-31-10 et seq. (VPDES Permit Regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Board" means the State Water Control Board.

"Car wash" means any manual, automatic or self-service facility where the washing of vehicles including cars, vans and pick-up trucks is conducted as designated by SIC 7542. It includes auto dealer preparation and detailing, and fleet vehicle washing. It does not mean facilities that wash or steam clean engines and heavy equipment, or tractor-trailer and bus washing or tanker cleaning.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality, or an authorized representative.

9 VAC 25-194-20. Purpose.

This general permit regulation governs the discharge of wastewater from car wash facilities to surface waters.

9 VAC 25-194-30. Delegation of authority.

The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9 VAC 25-194-40. Effective date of the permit.

This general permit will become effective on *****, 199*. This general permit will expire five years after the effective date. This general permit is effective for any covered owner upon compliance with all the provisions of 9 VAC 25-194-50 and the receipt of this general permit.

9 VAC 25-194-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9 VAC 25-194-60, files the required permit fee, complies with the effluent limitations and other requirements of 9 VAC 25-194-70, and provided that:

1. The owner shall not have been required to obtain an individual permit as may be required in the VPDES permit regulation.

2. The owner shall not be authorized by this general permit to discharge to state waters specifically named in other board regulations or policies which prohibit such discharges.

B. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

9 VAC 25-194-60. Registration statement.

The owner shall file a complete VPDES general permit registration statement for car wash facilities. Any owner of an existing car wash which is covered by this general permit, who's discharge increases above a monthly average flow rate of 5,000 gallons per day, shall file an amended registration statement at least 30 days prior to commencing operation of the new process. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for commencing construction or operation of the new discharge. Any owner of an existing car wash covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing car wash not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file the registration statement. The required registration statement shall be in the following form:

VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM GENERAL PERMIT REGISTRATION STATEMENT FOR CAR WASH FACILITIES

1. APPLICANT INFORMATION:

A. Name of Facility: _____

B. Facility Owner: _____

C. Owner's Mailing Address

a. Street or P.O. Box _____

b. City or Town _____ c. State ____ d. Zip Code _____

e. Phone Number _____

D. Facility Location: _____

Street No., Route No., or Other Identifier

Proposed Regulations

E. Is the operator of the facility also the owner?
___ Yes ___ No
If No, complete F. & G.

F. Name of Operator: _____

G. Operator's Mailing Address

a. Street or P.O. Box _____

b. City or Town _____ c. State ___ d. Zip Code _____

e. Phone Number _____

2. FACILITY INFORMATION:

Will this facility discharge to surface waters? ___ Yes
___ No If yes, name of receiving stream

Does this facility currently have an existing VPDES Permit?
___ Yes ___ No If yes, what is the Permit No.

3. MAP:

Attach a topographic map extending to at least one mile beyond property boundary, indicate location of facility, the discharge and the name of topographic quadrangle.

4. NATURE OF BUSINESS: (provide a brief description of the type of car wash and type of vehicles washed)

5. NUMBER OF CAR WASH BAYS: _____

6. AVERAGE FLOW RATE: (The highest average monthly flow rate measured or estimated to be discharged. For existing facilities calculate the average flow rate by adding the flows for each day during the month that the car wash had a discharge divided by the number of days that the car wash discharged. For new facilities estimate the flow rate based on similar car wash facilities.)

_____ gallons per day

7. FACILITY DRAWING AND TREATMENT INFORMATION:

Attach a line drawing of the car wash showing the source of the water and its flow through the facility. Show all bays. Provide dimensions or capacities for each unit in the treatment system.

8. CHEMICALS USED:

List any chemicals added to the water that may be discharged.

9. CERTIFICATION:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to

assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

Signature: _____ Date: _____

Name of person signing above: _____
(printed or typed)

Title: _____

REQUIRED ATTACHMENTS:

Facility Drawing

Topographic Map

For Department use only:

Accepted/Not Accepted by: _____

Date: _____

Basin _____ Stream Class _____

Section _____

Special Standards _____

9 VAC 25-194-70. General permit.

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the permit regulation.

General Permit No.: VAG75

Effective Date: *****, 199*

Expiration Date: *****, 200*

GENERAL PERMIT FOR CAR WASH FACILITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM

AND

THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of car wash facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I - Effluent Limitations and Monitoring Requirements, Part II - Monitoring and Reporting, and Part III - Management Requirements, as set forth herein.

Proposed Regulations

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from car wash facilities that discharge a monthly average flow rate less than or equal to 5,000 gallons per day from outfall(s) serial number(s):

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/Year	Estimate
pH (S.U.)	6.0*	9.0*	1/Year	Grab
TSS (mg/l)	NA	60	1/Year	5G/8HC
Oil and Grease (mg/l)	NA	15	1/Year	Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

* Where the Water Quality Standards Part IX (9 VAC 25-260-360 et seq.) establish alternate standards for pH, those standards shall be the maximum and minimum effluent limitations.

5G/8HC - Eight Hour Composite - Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.

Samples shall be collected by June 30, and reported on the facility's Discharge Monitoring Report (DMR). DMRs shall be submitted by the 10th of July of each year.

2. There shall be no discharge of floating solids or visible foam in other than trace amount.

PART I.

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater originating from car wash facilities that discharge a monthly average flow rate greater than 5,000 gallons per day from outfall(s) serial number(s):

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Minimum	Maximum	Frequency	Sample Type
Flow (GPD)	NA	NL	1/6 Months	Estimate
pH (S.U.)	6.0*	9.0*	1/6 Months	Grab

TSS (mg/l) NA 60 1/6 Months 5G/8HC

Oil and Grease (mg/l) NA 15 1/6 Months Grab

NL - No Limitation, monitoring requirement only

NA - Not applicable

* Where the Water Quality Standards Part IX (9 VAC 25-260-360 et seq.) establish alternate standards for pH, those standards shall be the maximum and minimum effluent limitations.

5G/8HC - Eight Hour Composite - Consisting of five grab samples collected at hourly intervals until the discharge ceases, or until a minimum of five grab samples have been collected.

Samples shall be collected by December 31 and June 30, and reported on the facility's Discharge Monitoring Report (DMR). DMRs shall be submitted by the 10th of the following month - January 10, and July 10.

2. There shall be no discharge of floating solids or visible foam in other than trace amount.

B. Special conditions.

1. The permittee shall perform inspections of the effluent and maintenance of the wastewater treatment facilities at least once per week and document activities on the operational log. This operational log shall be made available for review by the department personnel upon request.

2. No sewage shall be discharged from a point source to surface waters from this facility except under the provisions of another VPDES permit specifically issued for that purpose.

3. There shall be no chemicals added to the water or waste which may be discharged other than those listed on the owner's accepted registration statement, unless prior approval of the chemical(s) is granted by the board.

4. Wastewater should be reused or recycled whenever feasible.

5. The permittee shall comply with the following solids management plan:

a. There shall be no discharge of floating solids or visible foam in other than trace amounts.

b. All settling basins shall be cleaned frequently in order to achieve effective treatment.

c. All solids resulting from the car wash facility covered under this general permit, shall be handled, stored and disposed of so as to prevent a discharge to state waters of such solids.

6. This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard, limitation or prohibition for a pollutant which is promulgated or approved under § 307(a)(2) of the Clean Water Act, if the effluent standard, limitation or prohibition so promulgated or approved:

- a. Is more stringent than any effluent limitation on the pollutant already in the permit; or
- b. Controls any pollutant not limited in the permit.

7. Washing of vehicles or containers bearing residue of toxic chemicals (fertilizers, organic chemicals, etc.) into the wastewater treatment system is prohibited. If the facility is a self-service operation, the permittee shall post this prohibition on a sign prominently located and of sufficient size to be easily read by all patrons.

8. Any permittee discharging into a municipal separate storm sewer shall notify the owner of the municipal separate storm sewer system of the existence of the discharge within 30 days of coverage under the general permit.

PART II. MONITORING AND REPORTING.

A. Sampling and analysis methods.

1. Samples and measurements taken as required by this permit shall be representative of the volume and nature of the monitored activity.
2. Unless otherwise specified in this permit all sample preservation methods, maximum holding times and analysis methods for pollutants shall comply with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of Pollutants promulgated at 40 CFR Part 136 (1995).
3. The sampling and analysis program to demonstrate compliance with the permit shall at a minimum, conform to Part I of this permit.
4. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Recording of results. For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

1. The date, exact place and time of sampling or measurements;
2. The person(s) who performed the sampling or measurements;
3. The dates analyses were performed;
4. The person(s) who performed each analysis;
5. The analytical techniques or methods used;
6. The results of such analyses and measurements;

C. Records retention. All records and information resulting from the monitoring activities required by this permit, including all records of analyses performed and calibration and maintenance of instrumentation and recording from continuous monitoring instrumentation, shall be retained for three years from the date of the sample, measurement or report or until at least one year after coverage under this general permit terminates, whichever is later. This period of

retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

D. Additional monitoring by permittee. If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the monitoring report. Such increased frequency shall also be reported.

E. Water quality monitoring. The board may require every permittee to furnish such plans, specifications, or other pertinent information as may be necessary to determine the effect of the pollutant(s) on the water quality or to ensure pollution of state waters does not occur or such information as may be necessary to accomplish the purposes of the State Water Control Law, the Clean Water Act or the board's regulations.

The permittee shall obtain and report such information if requested by the board. Such information shall be subject to inspection by authorized state and federal representatives and shall be submitted with such frequency and in such detail as requested by the board.

F. Reporting requirements.

1. The discharge monitoring reports (DMRs) shall be submitted to the appropriate regional office by January 10th, and July 10th of each year. Those facilities which require once per year monitoring shall submit the DMR for each monitoring year by the 10th of July of each year.
2. If, for any reason, the permittee does not comply with one or more limitations, standards, monitoring or management requirements specified in this permit, the permittee shall submit to the department's regional office with the monitoring report at least the following information:
 - a. A description and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or the anticipated time when the noncompliance will cease; and
 - c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the noncompliance.

Whenever such noncompliance may adversely affect state waters or may endanger public health, the permittee shall submit the above required information by oral report within 24 hours from the time the permittee becomes aware of the circumstances and by written report within five days. The board may waive the written report requirement on a case-by-case basis if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report any unpermitted, unusual or extraordinary discharge which enters or could be expected to enter state waters. The permittee shall provide information specified in Part II G 2 a through c regarding each such discharge immediately, that is as

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quickly as possible upon discovery, however, in no case later than 24 hours. A written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

Unusual or extraordinary discharge would include but not be limited to (i) unplanned bypasses, (ii) upsets, (iii) spillage of materials resulting directly or indirectly from processing operations, (iv) breakdown of processing or accessory equipment, (v) failure of or taking out of service, sewage or industrial waste treatment facilities, auxiliary facilities, or (vi) flooding or other acts of nature.

This report shall be made to the regional office at (XXX) XXX-XXXX. For reports outside normal working hours, a message shall fulfill the reporting requirements. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

G. Signatory requirements.

Any registration statement, report, or certification required by this permit shall be signed as follows:

1. Registration statement.

a. For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

b. For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected official. A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.

c. For a partnership or sole proprietorship: by a general partner or proprietor respectively.

2. Reports. All reports required by permits and other information requested by the board shall be signed by:

a. One of the persons described in subdivision 1 a, b, or c of this subsection; or

b. A duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in subdivision 1 a, b, or c of this subsection; and

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

(3) If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization must be submitted to the department prior to or together with any separate information, or registration statement to be signed by an authorized representative.

3. Certification. Any person signing a document under subdivision 1 or 2 of this subsection shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

PART III.

MANAGEMENT REQUIREMENTS.

A. Change in discharge of pollutants.

1. Any permittee proposing a new discharge shall submit a registration statement for a permit at least 30 days prior to the date planned for commencing erection, construction or expansion, or the addition of new processes which will result in a new discharge. There shall be no construction or operation of said facilities prior to the issuance of a permit.

2. The permittee shall submit a registration statement at least 30 days prior to any planned changes, including proposed facility alterations or additions, production increases, adding new processes or process modifications when:

a. The planned change to a permitted facility meets one of the criteria for determining whether a facility is a new source; or

b. The planned change could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to the notification level requirements in Part III A 3; or

c. The planned change may result in noncompliance with permit requirements.

3. The permittee shall promptly provide written notice of the following:

a. Any reason to believe that any activity has occurred or will occur which would result in the discharge on a routine or frequent basis of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (1) One hundred micrograms per liter (100 ug/l);
- (2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) The level established in accordance with regulation under § 307(a) of the Clean Water Act and accepted by the Director, Department of Environmental Quality.

b. Any activity has occurred or will occur which would result in any discharge on a nonroutine or infrequent basis of a toxic pollutant which is not limited in the permit if that discharge will exceed the highest of the following "notification levels":

- (1) Five hundred micrograms per liter (500 ug/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) The level established by the Director, Department of Environmental Quality.

Such notice shall include information on: (1) the characteristics and quantity of pollutants to be introduced into or from such treatment works; (2) any anticipated impact of such change in the quantity and characteristics of the pollutants to be discharged from such treatment works; and (3) any additional information that may be required by the board.

B. Treatment works operation and quality control.

1. Design and operation of facilities or treatment works and disposal of all wastes shall be in accordance with the registration statement filed with the department and in conformity with the conceptual design, or the plans, specifications, or other supporting data accepted by the board. The acceptance of the treatment works conceptual design or the plans and specifications does not relieve the permittee of the responsibility of designing and operating the facility in a reliable and consistent manner to meet the facility performance requirements in the permit. If facility deficiencies, design or operational, are identified in the future which could affect the facility performance or reliability, it is the responsibility of the permittee to correct such deficiencies.

2. All waste collection, control, treatment, and disposal facilities shall be operated in a manner consistent with the following:

a. At all times, all facilities shall be operated in a prudent and workmanlike manner so as to minimize upsets and discharges of excessive pollutants to state waters.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out the operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

c. Maintenance of treatment facilities shall be carried out in such a manner that the monitoring and limitation requirements are not violated.

d. Collected solids shall be stored and disposed of in such a manner as to prevent entry of those wastes (or runoff from the wastes) into state waters.

C. Adverse impact.

The permittee shall take all feasible steps to minimize any adverse impact to state waters resulting from noncompliance with any limitation(s) or conditions specified in this permit, and shall perform and report such accelerated or additional monitoring as is necessary to determine the nature and impact of the noncomplying limitation(s) or conditions.

D. Duty to halt, reduce activity or to mitigate.

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

2. The permittee shall take all reasonable steps to minimize, correct or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Structural stability.

The structural stability of any of the units or parts of the facilities herein permitted is the sole responsibility of the permittee and the failure of such structural units or parts shall not relieve the permittee of the responsibility of complying with all terms and conditions of this permit.

F. Bypassing.

Any bypass ("bypass" means intentional diversion of waste streams from any portion of a treatment works) of the treatment works herein permitted is prohibited unless:

1. Anticipated bypass - If the permittee knows in advance of the need for a bypass, the permittee shall notify the department's regional office promptly at least 10 days prior to the bypass. After considering its adverse effects the board may approve an anticipated bypass if:

a. The bypass is unavoidable to prevent a loss of life, personal injury, or severe property damage ("severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production); and

b. There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal

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periods of equipment down time. However, if a bypass occurs during normal periods of equipment down time, or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

2. *Unplanned bypass* - If an unplanned bypass occurs, the permittee shall notify the department's regional office as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in subdivision 1 of this subsection and in light of the information reasonably available to the permittee at the time of the bypass.

G. Conditions necessary to demonstrate an upset.

A permittee may claim an upset as an affirmative defense to an action brought for noncompliance for only technology-based effluent limitations. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;
2. The facility permitted herein was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;
3. The permittee submitted a notification of noncompliance as required by Part II G of this chapter; and
4. The permittee took all reasonable steps to minimize or correct any adverse impact to state waters resulting from noncompliance with the permit.

H. Compliance with state and federal law.

Compliance with this permit during its term constitutes compliance with the State Water Control Law and the Clean Water Act except for any toxic standard imposed under § 307(a) of the Clean Water Act.

Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

I. Property rights.

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

J. Severability.

The provisions of this permit are severable.

K. Duty to register.

If the permittee wishes to continue to discharge under a general permit after the expiration date of this permit, the permittee must submit a new registration statement at least 120 days prior to the expiration date of this permit.

L. Right of entry.

The permittee shall allow, or secure necessary authority to allow, authorized state and federal representatives, upon the presentation of credentials:

1. To enter upon the permittee's premises on which the establishment, treatment works, or discharge(s) is located or in which any records are required to be kept under the terms and conditions of this permit;
2. To have access to inspect and copy at reasonable times any records required to be kept under the terms and conditions of this permit;
3. To inspect at reasonable times any monitoring equipment or monitoring method required in this permit;
4. To sample at reasonable times any waste stream, discharge, process stream, raw material or byproduct; and
5. To inspect at reasonable times any collection, treatment or discharge facilities required under this permit.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection time unreasonable during an emergency.

M. Transferability of permits.

This permit may be transferred to another person by a permittee if:

1. The current owner notifies the department's regional office 30 days in advance of the proposed transfer of the title to the facility or property;
2. The notice to the department includes a written agreement between the existing and proposed new owner containing a specific date of transfer of permit responsibility, coverage and liability between them; and
3. The department does not within the 30-day time period notify the existing owner and the proposed owner of the board's intent to modify or revoke and reissue the permit.

Such a transferred permit shall, as of the date of the transfer, be as fully effective as if it had been issued directly to the new permittee.

N. Public access to information.

Any secret formulae, secret processes, or secret methods other than effluent data submitted to the department may be claimed as confidential by the submitter pursuant to § 62.1-44.21 of the Code of Virginia. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "secret formulae, secret

processes or secret methods" on each page containing such information. If no claim is made at the time of submission, the department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in the Virginia Freedom of Information Act (§§ 2.1-340 et seq. and 62.1-44.21 of the Code of Virginia).

Claims of confidentiality for the following information will be denied:

1. The name and address of any permit applicant or permittee;
2. Registration statements, permits, and effluent data.

Information required by the registration statement may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

O. Permit modification.

The permit may be modified when any of the following developments occur:

1. When a change is made in the promulgated standards or regulations on which the permit was based;
2. When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of § 307(a) of the Clean Water Act (33 USC § 1251 et seq.); or
3. When the level of discharge of a pollutant not limited in the permit exceeds applicable Water Quality Standards or the level which can be achieved by technology-based treatment requirements appropriate to the permittee.

P. Permit termination.

After public notice and opportunity for a hearing, the general permit may be terminated for cause.

Q. When an individual permit may be required.

The board may require any permittee authorized to discharge under this permit to apply for and obtain an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:

1. The discharger(s) is a significant contributor of pollution.
2. Conditions at the operating facility change altering the constituents or characteristics of the discharge such that the discharge no longer qualifies for a general permit.
3. The discharge violates the terms or conditions of this permit.
4. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source.
5. Effluent limitation guidelines are promulgated for the point sources covered by this permit.

6. A water quality management plan containing requirements applicable to such point sources is approved after the issuance of this permit.

This permit may be terminated as to an individual permittee for any of the reasons set forth above after appropriate notice and an opportunity for a hearing.

R. When an individual permit may be requested.

Any owner operating under this permit may request to be excluded from the coverage of this permit by applying for an individual permit. When an individual permit is issued to an owner the applicability of this general permit to the individual owner is automatically terminated on the effective date of the individual permit. When a general permit is issued which applies to an owner already covered by an individual permit, such owner may request exclusion from the provisions of the general permit and subsequent coverage under an individual permit.

S. Civil and criminal liability.

Except as provided in permit conditions on "bypassing" (Part III F), and "upset" (Part III G) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance with the terms of this permit.

T. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

U. Unauthorized discharge of pollutants.

Except in compliance with this permit, it shall be unlawful for any permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses.

9 VAC 25-194-80. Evaluation of chapter and petitions for reconsideration or revision.

Within three years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter, (ii) alternatives which would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner, (iii) an assessment of the effectiveness of this chapter, (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements this chapter which are more stringent than federal requirements, and (v) the results of a

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review as to whether this chapter is clearly written and easily understandable by affected entities. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendment, (ii) repeal this chapter or (iii) amend this chapter. If the board is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

DOCUMENT INCORPORATED BY REFERENCE

Standard Industrial Classification Manual 1987, U.S. Office of Management and Budget, National Technical Information Service, Order No. PB 87-100012.

VA.R. Doc. No. R97-260; Filed January 29, 1997, 11:36 a.m.

FINAL REGULATIONS

For information concerning Final Regulations, see Information Page.

Symbol Key

Roman type indicates existing text of regulations. *Italic type* indicates new text. Language which has been stricken indicates text to be deleted. [Bracketed language] indicates a substantial change from the proposed text of the regulation.

GEORGE MASON UNIVERSITY

REGISTRAR'S NOTICE: George Mason University is 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: 8 VAC 35-50-10 et seq. **Poster Posting Policy and Procedures.**

Statutory Authority: § 23-91.29(a) of the Code of Virginia.

Effective Date: January 21, 1997.

Summary:

These regulations set out the posting policy and procedures for faculty, staff, students, and visitors of George Mason University.

Agency Contact: Copies of the regulation may be obtained from Jeffrey A. Brandwine, Legal Affairs Department - MSN 2A3, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-2619.

CHAPTER 50.

POSTER POSTING POLICY AND PROCEDURES.

PART I.

GENERAL PROVISIONS.

8 VAC 35-50-10. Scope.

The policies and procedures provided herein apply to all George Mason University faculty, staff, and students, university contractors, and the general public. This chapter applies to all university facilities and grounds owned or leased.

8 VAC 35-50-20. Policy statement.

George Mason University facilities are for the primary use by its students, faculty, and staff in their efforts to advance the educational mission of the university. The primary purpose of the poster policy is to ensure the wise use of space available, balancing the need for effective and orderly advertising, maintenance of facilities and avoidance of littering. No information will be posted that is inconsistent with the educational mission of the university. Federal and Commonwealth of Virginia official signage will be posted in accordance with applicable regulations and is exempt from this chapter.

[The following are responsible for approving posting on specific campus ground areas in accordance with the Poster Posting Policy and Procedures for university organizations:]

George W. Johnson Center and Unions Operations:

Johnson Center Plaza
Student Union I Quad
Student Union II

Associate Vice President for Operational Services:

Mason Hall Plaza
Roadways and entrances
Parking lots
Grounds around the pond

Campus Hospitality:

Campus housing

Director of Intercollegiate Athletics:

Athletic fields and fieldhouse grounds]

PART II. DEFINITIONS.

8 VAC 35-50-30. Definitions.

"Academic" means those activities associated with the studies, teaching programs or learning mission of the university such as notices of lectures, symposiums, etc.

"Banner" means a strip of paper, plastic, cloth, or vinyl normally larger than 11 x 17 inches but not exceeding the size requirements specified for various locations advertising an on-campus event, function [or ,] special meeting [, theme, or promotion].

"Federal/official signage" means those signs required for compliance with regulations or laws such as equal employment opportunity, labor or safety requirements.

"Flyers/leaflets" means handbills designed for mass distribution. Flyers also include any papers not exceeding the size 8 1/2 x 11 inches.

"Nonacademic" means those activities not associated with the studies or teaching programs of the university such as notices for special events such as dances or other social events.

"Posters" means papers not exceeding 11 x 17 inches.

["Table tent" means a paper form of advertisement which is folded to create an open triangle on each end using a surface area not to exceed 8 1/2 x 11 inches. Each individual tent is placed separately on single tables.]

["~~Upbeat style banners" means banners made of cloth or similar material designed to slide or fit on brackets mounted on utility poles. The banners are normally 30 inches wide x 60 inches high with a one to two inch open seam which slides over a rod at the top and bottom next to the pole grommet or ties string is located at the side of the banner next to the pole for securing the banner to the pole. Banners to be placed on the exterior poles at the George Johnson Center Plaza should be 30 inches wide x 94 inches high with a 4 3/4 inch open seam. Grommets are required.~~

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"Vertical orientation style banners" means banners made of vinyl or similar material designed to slide or fit on brackets mounted on utility poles. The banners are normally 30 inches wide x 60 inches high with a 1 to 2.5 inch open seam which slides over a rod at the top and bottom of the banner. A grommet or ties string is located at the side of the banner next to the pole for securing the banner to the pole. Banners to be placed on the exterior poles at the George Johnson Center Plaza should be 30 inches wide x 98 inches high with a 4¾ inch open seam at top and bottom. Grommets are required.]

PART III. POLICY.

8 VAC 35-50-40. Policy.

The posting of information on the George Mason University campuses is subject to prior authorization and must be conducted in accordance with regulations established by the university. These guidelines augment but do not preempt applicable student housing, student unions, libraries, or athletics policies currently in effect for those facilities. The university [reserves the right to remove materials not posted in accordance with this chapter.] Off-campus organizations may post flyers/leaflets, posters and banners with prior approval from the Office of [~~Operational Services~~ Events Management].

8 VAC 35-50-50. Posters and flyers.

Bulletin boards are provided for the posting of signs, papers, posters, and advertisements, [etc.,] subject to the following:

1. Assigned bulletin boards:

- a. Selected bulletin boards are assigned for the exclusive use of academic departments (within the department office) or organizations assigned the posting space (within public areas);
- b. Assigned bulletin boards are labeled and are the responsibility of the department or the organization to which they are assigned;
- c. No materials may be posted on assigned bulletin boards without the authorization of the department or the organization assigned the posting space; and
- d. The departments or organizations assigned the posting space are responsible for removal of unauthorized materials and for keeping posted materials updated.

2. General bulletin boards.

- a. General bulletin boards are mounted in various campus locations and are available for the use and benefit of the campus community;
- b. Material posted on general bulletin boards is subject to approval by the officer or his designated representative as listed in 8 VAC 35-50-90;
- c. Areas designated for the posting of materials are designed to provide a means to advertise campus events, publicize services for students, faculty, any

staff of on-campus and off-campus activities and to disseminate educational or informative information. All individuals and organizations posting notices are expected to design and display their materials in a manner respectful of the diverse beliefs, opinions, and attitudes that exist in an institution of higher learning. Posted items must be educational or informative in nature. Items advocating an infraction of any law, ordinance, or official university policy or regulation may not be displayed and are subject to removal; and

d. Posters and flyers should never be hung where they cover up any previously posted current materials, unless the previously posted material is past the date of the event advertised or seven days in the case of educational flyers.

3. Residential housing areas.

- a. Flyers and posters may be placed on the kiosks outside of the student apartments and residence halls;
- b. In the residence halls, flyers may be posted only on the bulletin boards in the lobbies; extra copies may be left at the main desk for general distribution.

4. Quantities.

- a. Posters and flyers. The following quantities (or combination of posters and flyers) may be posted in the building listed at any one time for one event [by university organizations]:

	[University]	[Nonuniversity]
College, Mason		
Fine Arts	5	[2]
Commerce Buildings		
I and II	5	[2]
Concert Hall	NONE	[NONE]
East Building	5	[2]
Enterprise Hall	10	[5]
Fenwick Library	10	[5]
Field House	1	[1]
Finley Building	5	[2]
King Hall	10	[5]
Krug Hall	10	[5]
Lecture Hall	2	[1]
[Metro Arlington]		
Center	5	[2]
Performing Arts	5	[2]
Physical Education		
Building	5	[2]
Prince William		
Institute	5	[2]
Robinson Hall,		
Wing A	10	[5]
Robinson Hall,		
Wing B	10	[5]
Science & Tech I	10	[5]
Science & Tech II	10	[5]
Student Union I	[10]	[4]
Student Union II	2	[1]
Thompson Hall	20	[10]

George W. Johnson Center	[20]	[6]
West Building	[25]	[2]

[b. Table tents. To reserve space to display table tents, see the George W. Johnson Center and Unions Operations Office located in the Johnson Center. The following are reservable locations and maximum quantities for designated areas:

Student Union I Lobby	10
Student Union I Phase Two	30
Johnson Center Bistro	15
Johnson Center Atrium	60
Student Union II Ciao Hall	50

5. Size. Poster size normally may not exceed 11 x 17 inches, although larger artistic posters may on occasion be approved at the discretion of the [~~Typing and Computer Center staff or their designated representative, Student Union I.~~ G. W. Johnson Center Information Desk. Table tents may not exceed a surface area of 8½ x 11 inches.]

6. Removal. [a.] Display time will be limited to seven days prior to the day of the activity [; .] [b.] Individuals or groups who post material are responsible for removal when obsolete [; and .] [c. All] Materials displayed longer than seven days will be removed every Tuesday between 9 a.m. and noon by university staff. [However, flyers, posters and table tents posted in the Johnson Center and student unions will be removed every Sunday between 5 p.m. and 6 p.m. by university staff.]

8 VAC 35-50-60. Prohibited locations.

No materials may be posted on the exterior surface of any university building, on interior or exterior pillars, breezeways or walkways, trees, light and lamp posts/poles, traffic control signs, or other existing permanent signs or posts. In addition, nothing shall be affixed to any walls, windows, doors [,] or door frames, glass panels, or painted surfaces either inside or outside. Placing materials on windshields of vehicles on campus or under residence hall doors is considered littering and is strictly prohibited. The only exceptions are materials relating to fire, health, or safety (such materials must be reviewed by the Emergency Communications Committee and approved for posting by the Director, Media Relations, D217, Mason Hall) or notifications of utility outages approved by the Physical Plant.

8 VAC 35-50-70. Methods of posting.

Individuals posting materials should use thumbtacks, staples or masking tape as appropriate. Under no circumstances should transparent tape be used.

8 VAC 35-50-80. Banners.

A. General. Banners may be placed by [student university] organizations in the main [lounge and cafeteria lobby] of Student Union I on metal wires which have been provided for this purpose, on the beam at the entrance to Student Union [I and] II, and in the gymnasium of the

Physical Education Building. The Center for the Arts may hang a banner on the hooks provided on the Performing Arts Building. [~~Upbeat~~ Vertical orientation] style banners may be placed on those light poles fitted with the appropriate mounting brackets. Banners may not be placed in, on, or between any other university building, between any light poles (safety) or on the university grounds.

B. [G. W. Johnson Center and] student unions. Banners to be placed in [the G. W. Johnson Center and] Student Union I or II must conform to size limitations specified [~~in the University Unions Poster Policy.~~ by the G. W. Johnson Center Operations Office. Banners to be posted in these facilities will be mounted by facility operations staff.] It is the responsibility of the student organization to remove [~~the banner~~ self-posted banners on the reservation end date or] within 24 hours after the function [, whichever is appropriate]. Banners placed on the front or rear metal wires of the student union main [Lounge lobby] may be draped or temporarily removed for the duration of scheduled programs taking place in the main [lounge lobby] , so as not to interfere with or distract from such programs. It is the responsibility of the sponsor of the program scheduled in the main [lounge lobby] to carefully remove or drape and to replace or undrape the banner immediately following the main [lounge lobby] function.

C. Campus grounds. The mounting of [~~upbeat~~ vertical orientation] style banners on campus [exterior] light poles must be requested through the Physical Plant. The work request for installation is to specify the desired dates of installation and removal. The banners will be available for pick up at the Physical Plant Work Control Center by the requesting organization once removed.

D. Banners to be mounted in the gymnasium and on the Performing Arts Building will be mounted and removed by the appropriate recreational activity or Center for the Arts staff.

8 VAC 35-50-90. Stamping/approval requirements.

A. All [~~student~~ university organizations] activity posters or flyers and banners, whether they advertise on-campus or off-campus functions or services, must be stamped at the [~~Typing and Computer Center or their designated representative~~ G. W. Johnson Center Information Desk] prior to posting on the campus.

B. All nonuniversity or general public organization posters, flyers or banners must be approved [and stamped] by the University [~~Outreach~~] Office [of Events Management] prior to posting.

C. All posters or banners to be mounted on stakes placed in the ground must also be approved by the Physical Plant to ensure underground utility lines are not damaged.

D. [~~All posters, flyers or banners~~ University organizations posters or flyers] to be posted in the George W. Johnson Center [, student unions and academic buildings] must be approved and stamped at the George W. Johnson Center Information Desk prior to posting. [Banners and table tents must be approved through the G. W. Johnson Center and Unions Operations Office prior to posting.]

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E. All posters, flyers or banners to be posted in the field house must be approved by the Assistant Athletic Director for Facilities or his designated representative prior to posting.

F. All posters, flyers or banners to be posted in the Physical Education Building must be approved by the Athletic Department Community Relations Office prior to posting.

G. All posters, flyers or banners to be posted at the Arlington Campus must be approved and stamped by the Associate Dean of the Law School or his designated representative prior to posting.

H. All posters, flyers or banners to be posted at the Prince William Institute must be approved and stamped by the Assistant to the Director, Prince William Institute, prior to posting.

8 VAC 35-50-100. Approval criteria.

A. The name of the sponsoring group or organization must appear on each poster, flyer or banner [, unless otherwise deemed acceptable].

B. No material will be approved for posting which advertises activities, events or groups which would:

1. Interfere with or be incompatible with the primary educational mission and goals of the university as stated in the introduction to the university catalog;

2. Have a clear and present potential hazard of interfering with the process of the university, infringing upon the rights of others, or endangering the health or safety of the university community or their guests; or

3. Restrict participation on the basis of sex (except social fraternities and sororities and other groups exempted by Title IX of the [Higher] Education Amendments of [1974-1972] (20 USC § 1681 et seq.)), race, color, religion, creed, national origin, political affiliation, handicap, or the exercise of rights secured by the First Amendment of the United States Constitution.

C. Materials for posting may not include reference to a cost per alcoholic drink; may not contain any statement, symbol depiction, or reference that would tend to induce persons to consume to excess such as "all you can drink," "free flowing taps"; and may not give the impression that alcoholic beverages will be free.

D. All advertising of events where alcohol will be served must indicate that a GMU identification card is necessary for admission.

E. Events where alcohol is being served on campus may not be advertised outside the university community.

F. For fund raisers, all beneficiaries of the fund raising effort must be specified in the promotional materials.

G. Foreign language materials may be approved for posting if the name of the sponsoring organization appears in English on the poster, and if the sponsoring organization provides a written translation of the material to the [~~Typing and Computer Center staff or the designated representative~~ appropriate approving units].

8 VAC 35-50-110. Leafletting and petitioning.

Noncommercial written materials may be hand distributed or names collected for petitions by student organizations, individual students, and others at reserved tables in accordance with Administrative Policy Number 53, 8 VAC 35-40-10 et seq. Vending Sales and Solicitation, in the main [lounges lobbies] of the student unions or on the sidewalk area immediately in front of the student unions, [or at a reserved kiosk in the G. W. Johnson Center,] provided these actions are not disruptive of normal university functions. A copy of any materials to be hand distributed should be delivered to the [~~Typing and Computer Center~~ G. W. Johnson Center and Unions Operations Office (university organizations) or to the Office of Events Management (nonuniversity organizations)] at least 24 hours prior to the activity and must bear the name of the sponsoring organization or individuals. Organizations, groups or individuals distributing leaflets are responsible for continually policing the immediate area for any dropped literature.

8 VAC 35-50-120. Directional signs for special events.

A. Makeshift paper or cardboard directional signs are not to be fastened to campus signs, light posts or traffic signs. Parking Services will be contacted for the availability of PVC pipe sign boards for use in displaying temporary directional signage. The requesting activity is responsible for the placement and return of the signboards.

B. Parking Services will be contacted for the manufacture and placement of directional signs located at the entrance to the campus. These signs will be mounted and removed by Parking Services staff.

8 VAC 35-50-130. Violations.

A. Violation of these provisions constitute potential grounds for (i) removal of the material, (ii) denial of approval to post materials by that organization for a specified period of time, (iii) loss of access to duplicating services or other facilities use restrictions as determined by the Associate Vice President of Operational Services or his designated representative, and (iv) charges for the cost of removal of the material and any associated repairs.

B. Posting of materials or distribution of flyers [/leaflets] without prior approval as specified above will be considered as littering and is subject to the laws of the Commonwealth.

8 VAC 35-50-140. Interpretations.

Requests for waivers or exceptions to this policy must be made to the Associate Vice President of Operational Services or his designated representative.

PART IV.

POSTING BY NONUNIVERSITY ORGANIZATIONS.

8 VAC 35-50-150. Policy on posting by nonuniversity organizations.

A. This chapter applies to nonuniversity organizations desiring to post posters, banners or distribute flyers on campus independently or if sponsored by a recognized student organization. This chapter also applies to outside organizations on campus either independently or sponsored

by an organization to distribute literature or solicit memberships. Vendors wanting to distribute newspapers are regulated by University Administrative Policy Number 53, 8 VAC 35-40-10 et seq. Vending Sales and Solicitation.

B. All nonuniversity organizations must conform to the laws of the Commonwealth.

C. The offices having approval authority for posting of information pursuant to 8 VAC 35-50-100 reserves the right to assign nonuniversity organizations to specific locations for the posting of information.

D. At no time shall GMU grant or deny authorization of distribution of information on its content, unless such distribution is commercially motivated. However, the distribution of said material shall be subject to reasonable time, place and manner restrictions.

E. Only a limited amount of space is available to nonuniversity activities. Preference for assignment of space will take into account the number of previous approvals for the group or activity, status as a major campus-wide activity, and time constraints of events that may be advertised. Priority will be given to activities conducted by students, faculty or staff, alone or in conjunction with nonuniversity activities, over those conducted solely by nonuniversity activities.

F. At no time are nonuniversity activities to be advertised on campus except in campus newspapers or on approved bulletin boards or locations unless otherwise indicated in writing by an authorizing official. This includes, but is not limited to, the use of e-mail, mailboxes, bulletin boards, flyers on cars, hand-out flyers to students, sandwich boards, etc.

G. These posting regulations may not apply to nonuniversity activities in special campus-sponsored events, as determined by the officer in charge of overseeing this regulation, which occur from time to time on campus. However, those events may have their own regulations which apply to nonuniversity organizations. These regulations must be submitted for review by and approval from the authorized university official in charge of overseeing this chapter.

8 VAC 35-50-160. Procedures for obtaining approval for posting.

A. All nonuniversity organization posters, [leaflets,] flyers or banners must be approved [and stamped] by the University [Outreach] Office [of Events Management] prior to posting.

B. Once [banners are] approved for posting on campus, the nonuniversity activity sponsor must obtain the approval of the [Office of Information Services and the] approving authority for specific areas outlined in 8 VAC 35-50-100 where applicable prior to posting.

8 VAC 35-50-170. Use of bulletin boards and posting materials.

Nonuniversity organizations will comply with the guidelines provided in Part III [(8 VAC 35-50-40 et seq.)] of this chapter.

PART V. AMENDMENTS AND ADDITIONS.

8 VAC 35-50-180. Amendments and additions.

All amendments and additions to this chapter are to be reviewed and approved by the Office of the Provost [; and] the Office of the [~~Executive Vice President for Administration and the Office of the Executive Vice President for Finance and Planning Senior Vice President~~].

VA.R. Doc. No. R97-241; Filed January 21, 1997, 4:02 p.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY

Title of Regulation: 4 VAC 25-130-10 et seq. Coal Surface Mining Reclamation Regulations (amending 4 VAC 25-130-784.14 and 4 VAC 25-130-817.41).

Statutory Authority: §§ 45.1-161.3 and 45.1-230 of the Code of Virginia.

Effective Date: March 19, 1997.

Summary:

The amendments govern protection against uncontrolled blowouts of water from underground coal mine workings. The amendments add a requirement that applicants for coal mining permits must include information in their permit applications about the steps to be taken during mining to prevent the sudden release of accumulated water from underground mine workings. The amendments also establish a minimum width for the barrier of coal to be left in place where the coal seam being mined dips toward the land surface and where the barrier may impound water. The amendments provide a standard formula for calculating the required barrier thickness, or alternately allows for site-specific designs to determine the needed barrier thickness.

Summary of Public Comment and Agency Response: No public comment was received by the promulgating agency.

Agency Contact: Copies of the regulation may be obtained from William H. Bledsoe, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8177.

4 VAC 25-130-784.14. Hydrologic information.

(a) Sampling and analysis. All water quality analyses performed to meet the requirements of this section shall be conducted according to the methodology in the current edition of "Standard Methods for the Examination of Water and Wastewater," which is incorporated by reference, or the methodology in 40 CFR Parts 136 and 434. Water quality sampling performed to meet the requirements of this section shall be conducted according to either methodology listed above when feasible.

(b) Baseline information. The application shall include the following baseline hydrologic information, and any additional information required by the division.

(1) Groundwater information. The location and ownership for the permit and adjacent areas of existing wells,

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springs, and other groundwater resources, seasonal quality and quantity of groundwater, and usage. Water quality descriptions shall include, at a minimum, total dissolved solids or specific conductance corrected to 25° C, pH, total iron, and total manganese. Groundwater quantity descriptions shall include, at a minimum, approximate rates of discharge or usage and elevation of water in the coal seam, and each water-bearing stratum above and potentially impacted stratum below the coal seam.

(2) Surface water information. The name, location, ownership and description of all surface water bodies such as streams, lakes, and impoundments, the location of any discharge into any surface water body in the proposed permit and adjacent areas, and information on surface water quality and quantity sufficient to demonstrate seasonal variation and water usage. Water quality descriptions shall include, at a minimum, baseline information on total suspended solids, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, and total manganese. Baseline acidity and alkalinity information shall be provided if there is a potential for acid drainage from the proposed mining operation. Water quantity descriptions shall include, at a minimum, baseline information on seasonal flow rates.

(3) Supplemental information. If the determination of the probable hydrologic consequences (PHC) required by paragraph (e) of this section indicates that adverse impacts on or off the proposed permit area may occur to the hydrologic balance, or that acid-forming or toxic-forming material is present that may result in the contamination of groundwater or surface water supplies, then information supplemental to that required under paragraph (b)(1) and (b)(2) of this section shall be provided to evaluate such probable hydrologic consequences and to plan remedial and reclamation activities. Such supplemental information may be based upon drilling, aquifer tests, hydrogeologic analysis of the water-bearing strata, flood flows, or analysis of other water quality or quantity characteristics.

(c) Baseline cumulative impact area information.

(1) Hydrologic and geologic information for the cumulative impact area necessary to assess the probable cumulative hydrologic impacts of the proposed operation and all anticipated mining on surface water and groundwater systems as required by paragraph (f) of this section shall be provided to the division if available from appropriate federal or state agencies.

(2) If this information is not available from such agencies, then the applicant may gather and submit this information to the division as part of the permit application.

(3) The permit shall not be approved until the necessary hydrologic and geologic information is available to the division.

(d) Modeling. The use of modeling techniques, interpolation or statistical techniques may be included as part of the permit application, but actual surface water and

groundwater information may be required by the division for each site even when such techniques are used.

(e) Probable hydrologic consequences determination.

(1) The application shall contain a determination of the probable hydrologic consequences (PHC) of the proposed operation upon the quality and quantity of surface and ground water under seasonal flow conditions for the proposed permit and adjacent areas.

(2) The PHC determination shall be based on baseline hydrologic, geologic and other information collected for the permit application and may include data statistically representative of the site.

(3) The PHC determination shall include findings on:

(i) Whether adverse impacts may occur to the hydrologic balance;

(ii) Whether acid-forming or toxic-forming materials are present that could result in the contamination of surface water or groundwater supplies; and

(iii) What impact the proposed operation will have on:

(A) Sediment yield from the disturbed area;

(B) Acidity, total suspended and dissolved solids, and other important water quality parameters of local impact;

(C) Flooding or streamflow alteration;

(D) Groundwater and surface water availability; and,

(E) Other characteristics as required by the division.

(4) An application for a permit revision shall be reviewed by the division to determine whether a new or updated PHC determination shall be required.

(f) Cumulative hydrologic impact assessment.

(1) The division shall provide an assessment of the probable cumulative hydrologic impacts (CHIA) of the proposed operation and all anticipated mining upon surface water and groundwater systems in the cumulative impact area. The CHIA shall be sufficient to determine, for purposes of permit approval, whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The division may allow the applicant to submit data and analyses relevant to the CHIA with the permit application.

(2) An application for a permit revision shall be reviewed by the division to determine whether a new or updated CHIA shall be required.

(g) Hydrologic reclamation plan. The application shall include a plan, with maps and descriptions, indicating how the relevant requirements of Part 817, including 4 VAC 25-130-817.41 through 4 VAC 25-130-817.43, will be met. The plan shall be specific to the local hydrologic conditions. It shall contain the steps to be taken during mining and reclamation through bond release to minimize disturbance to the hydrologic balance within the permit and adjacent areas; to prevent material damage outside the permit area; and to

meet applicable federal and state water quality laws and regulations. The plan shall include the measures to be taken to: avoid acid or toxic drainage; prevent to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow; provide and maintain water treatment facilities when needed; control drainage; *prevent the sudden release of accumulated water from the underground workings*; and restore approximate premining recharge capacity. The plan shall specifically address any potential adverse hydrologic consequences identified in the PHC determination prepared under paragraph (e) of this section and shall include preventive and remedial measures.

(h) Groundwater monitoring plan.

(1) The application shall include a groundwater monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the groundwater for current and approved postmining land uses, to support the objectives for protection of the hydrologic balance set forth in paragraph (g) of this section, to determine the cause of diminution or contamination of usable ground waters, and to guard against off-site influences and provide representation of the effects of the proposed surface coal mining operation. It shall identify the quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance. At a minimum, total dissolved solids or specific conductance corrected to 25°C, pH, total iron, total manganese, and water levels shall be monitored and data submitted quarterly or as otherwise specified by the division for each monitoring location.

(2) If an applicant can demonstrate by use of the PHC determination and other available information that a particular water-bearing stratum in the proposed permit and adjacent areas is not one which serves as an aquifer which significantly ensures the hydrologic balance within the cumulative impact area, then monitoring of that stratum may be waived by the division.

(3) The monitoring plan shall be designed in accordance with the following subparagraphs. The division may require additional monitoring and the analysis or measurement of other parameters on a site-specific basis. During the mining or postmining phase of activity, the division may require additional monitoring if it is determined that the established monitoring plan is ineffective.

(i) When pH or chemical analysis results indicate no immediate or potential acid-producing or toxic material within the proposed disturbed area, the applicant may submit a plan for representative monitoring. Appropriate monitoring which will indicate changes in subsurface water quality and quantity at sites which provide geological and hydrological representation of the entire proposed permit area shall be established.

(ii) When potential for adverse impacts to ground waters in use exists, then a representative monitoring plan utilizing wells or springs shall be provided.

(iii) When no potential to affect ground waters in use exists, then a plan utilizing piezometers or methods for representative monitoring in the unsaturated zone may be used.

(iv) When structural or stratigraphic variations are present within the proposed permit area, altering the ground water regime and indicating more than one representative area, the applicant shall include within the plan a minimum of one monitoring site for each representative area.

(v) The applicant shall include a plan to source monitor near isolated acid-producing or toxic material using piezometers or equipment for monitoring the unsaturated zone.

(vi) When any portion of a surface mine operation is proposed within a stream floodplain, the applicant shall include a plan for monitoring using wells in alluvial material both upstream and downstream of the proposed area to be disturbed. The plan shall also include adjacent upgradient and adjacent downgradient monitoring wells for any slurry pond with water having a pH of less than 6.0, coal stockpiles, and acid-producing or toxic-producing material disposal site.

(vii) In cases where the alluvium monitored has been determined to be consistently or seasonally unsaturated, the division may require revision of the monitoring plan to include appropriate monitoring of the unsaturated zone.

(viii) Where potential exists for adverse impacts to the hydrologic regime from a surface mining operation situated in an area of colluvium, the division may require monitoring similar to that required in floodplain areas.

(ix) For each refuse or hollow fill without an underdrain, the applicant shall include a plan to monitor the fill using piezometers which are sufficient in number and design to permit a planar determination of a potential water table within the fill.

(x) When a refuse or hollow fill is designed to contain underdrains, then a plan for monitoring the underdrain may be used, provided that the underdrain discharge indicates changes in water quality resulting from the fill and not from other sources or outside influences. If the underdrain is not representative of the effects of the fill material, then piezometers shall be used.

(xi) The applicant may include a plan to use a spring in lieu of other monitoring methods if:

(A) The spring is located both stratigraphically and geographically so that data representing an area to be disturbed or an acid or toxic spoil isolation area will be obtained.

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(B) The spring has been observed and documented satisfactorily to the division to be a permanent spring.

(xii) For the adjacent area, the applicant shall submit a plan to individually monitor each significant aquifer identified with wells, springs, mine discharges or any combination of these. The plan shall include flow measurements for each point under seasonal conditions. The division shall require quality analyses in addition to quantity measurements if it determines that such monitoring is necessary for protection of the hydrologic balance.

(i) Surface water monitoring plan.

(1) The application shall include a surface water monitoring plan based upon the PHC determination required under paragraph (e) of this section and the analysis of all baseline hydrologic, geologic and other information in the permit application. The plan shall provide for the monitoring of parameters that relate to the suitability of the surface water for current and approved postmining land uses and to the objectives for protection of the hydrologic balance as set forth in paragraph (g) of this section as well as the effluent limitations found at 40 CFR Part 434.

(2) The plan shall identify the surface water quantity and quality parameters to be monitored, sampling frequency and site locations. It shall describe how the data may be used to determine the impacts of the operation upon the hydrologic balance.

(i) At all monitoring locations in surface water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations, the total dissolved solids or specific conductance corrected to 25°C, total suspended solids, pH, total iron, total manganese, and flow shall be monitored.

(ii) For point-source discharges, monitoring shall be conducted in accordance with 40 CFR Parts 122, 123, and 434 and as required by the National Pollutant Discharge Elimination System permit.

(3) The monitoring reports shall be submitted to the division quarterly. The division may require additional monitoring.

4 VAC 25-130-817.41. Hydrologic-balance protection.

(a) General. All underground mining and reclamation activities shall be conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas, to prevent material damage to the hydrologic balance outside the permit area, and to support approved postmining land uses in accordance with the terms and conditions of the approved permit and the performance standards of this Part. The division may require additional preventative, remedial, or monitoring measures to assure that material damage to the hydrologic balance outside the permit area is prevented. Mining and reclamation practices that minimize water pollution and changes in flow shall be used in preference to water treatment.

(b) Groundwater protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 4 VAC 25-130-784.14(g) and the following:

(1) Groundwater quality shall be protected by handling earth materials and runoff in a manner that minimizes acidic, toxic, or other harmful infiltration to groundwater systems and by managing excavations and other disturbances to prevent or control the discharge of pollutants into the groundwater.

(2) Groundwater quantity shall be protected by handling earth materials and runoff in a manner that will restore approximate premining recharge capacity of the reclaimed area as a whole, excluding coal mine waste disposal areas and fills, so as to allow the movement of water to the groundwater system.

(c) Groundwater monitoring.

(1) Groundwater monitoring shall be conducted according to the groundwater monitoring plan approved under 4 VAC 25-130-784.14(h). The division may require additional monitoring when necessary.

(2) Representative monitoring.

(i) Representative monitoring points shall be established within 100 feet downgradient from the initial disturbance within each representative area. This distance may be modified by the division if it is demonstrated in the permit application that the 100 feet distance is inappropriate for the monitoring point.

(ii) If degradation, contamination or diminution of water quality or quantity are evident through monitoring, then additional monitoring and/or remedial action may be required by the division.

(3) Source monitoring.

(i) Source monitoring shall be used near isolated acid-producing or toxic-producing material. Monitoring shall be by piezometers or other equipment suitable for monitoring in the unsaturated zone. Piezometers or alternate equipment shall be installed in backfilled material during or within 45 days after final grading of the area. Installation in fill or temporary storage areas shall be as soon as practicable. Monitoring points shall be of sufficient number and locations so that adverse impacts can be readily detected.

(ii) Representative monitoring may be required by the division in addition to source monitoring when the operation may adversely impact usable ground waters.

(4) Well drilling, construction and completion.

(i) When wells are used, they shall be drilled either to the first water-producing zone or, if no water is encountered, to a depth of 100 feet below each coal seam to be mined. The division may require deeper drilling if site conditions indicate the potential for adverse impacts to a known water-producing zone which is at greater depth.

- (ii) Monitoring wells shall be drilled an additional 20 feet into the water-producing zone to aid in pumping.
- (iii) Monitoring wells shall:
- (A) Accommodate a four inch (4") submersible pump for sample extraction and measurement of field parameters. Other diameters may be approved by the division if sample extraction is allowed.
 - (B) Be constructed in a manner which isolates the water-producing zone to be monitored and prevents the mixing of ground waters.
 - (C) Be grouted from the surface to at least one foot into bedrock, with all leakage around the well casing prevented.
 - (D) Be capped, locked, and labeled with an identification number.
 - (E) Be properly developed and the final yield reported.
 - (F) Not be constructed or packed with materials which would adversely affect the monitoring results obtained.
- (iv) Existing wells may be used for monitoring provided that:
- (A) The well is located at a point where data representative of the permit or adjacent area will be obtained.
 - (B) The well penetrates the water-producing zone to be monitored.
 - (C) The well is constructed in a manner which effectively isolates the water-producing zone.
 - (D) The well meets the standards of paragraph (c)(4) above.
 - (E) Filtering systems and water softeners are not present which may alter the quality of the water sample. Filters or softeners may be disconnected or bypassed during sampling.
- (5) Groundwater monitoring data shall be submitted within 30 days after the end of the calendar quarter to the division. More frequent reporting may be prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any groundwater sample indicates noncompliance with the permit conditions, then the permittee shall promptly notify the division and immediately take the actions provided for in 4 VAC 25-130-773.17(e) and 4 VAC 25-130-784.14(g).
- (6) Groundwater monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with the procedures of 4 VAC 25-130-774.13, the division may modify the monitoring requirements including the parameters covered and the sampling frequency if the permittee demonstrates, using the monitoring data obtained under this paragraph, that:
- (i) The operation has minimized disturbance to the prevailing hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; or
 - (ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4 VAC 25-130-784.14(h).
- (7) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of groundwater onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.
- (d) Surface water protection. In order to protect the hydrologic balance, underground mining activities shall be conducted according to the plan approved under 4 VAC 25-130-784.14(g), and the following:
- (1) Surface water quality shall be protected by handling earth materials, groundwater discharges, and runoff in a manner that minimizes the formation of acidic or toxic drainage; prevents, to the extent possible using the best technology currently available, additional contribution of suspended solids to streamflow outside the permit area; and otherwise prevents water pollution. If drainage control, restabilization and revegetation of disturbed areas, diversion of runoff, mulching, or other reclamation and remedial practices are not adequate to meet the requirements of this section and 4 VAC 25-130-817.42, the permittee shall use and maintain the necessary water-treatment facilities or water quality controls.
 - (2) Surface water quantity and flow rates shall be protected by handling earth materials and runoff in accordance with the steps outlined in the plan approved under 4 VAC 25-130-784.14(g).
- (e) Surface water monitoring.
- (1) Surface water monitoring shall be conducted according to the surface water monitoring plan approved under 4 VAC 25-130-784.14(i). The division may require additional monitoring when necessary.
 - (2) Surface water monitoring data shall be submitted every three months to the division or more frequently as prescribed by the division. Monitoring reports shall include analytical results from each sample taken during the reporting period. When the analysis of any surface water sample indicates noncompliance with the permit conditions, the permittee shall promptly notify the division and immediately take the actions provided for in 4 VAC 25-130-773.17(e) and 4 VAC 25-130-784.14(g). Reporting shall be in accordance with the National Pollutant Discharge Elimination System (NPDES) permit requirements.
 - (3) Surface water monitoring shall proceed through mining and continue during reclamation until bond release. Consistent with 4 VAC 25-130-774.13, the division may modify the monitoring requirements, in accordance with the NPDES permit, including the

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parameters covered and sampling frequency, if the permittee demonstrates, using the monitoring data obtained under this paragraph, that-

(i) The operation has minimized disturbance to the hydrologic balance in the permit and adjacent areas and prevented material damage to the hydrologic balance outside the permit area; water quantity and quality are suitable to support approved postmining land uses; and

(ii) Monitoring is no longer necessary to achieve the purposes set forth in the monitoring plan approved under 4 VAC 25-130-784.14(i).

(4) Equipment, structures, and other devices used in conjunction with monitoring the quality and quantity of surface water onsite and offsite shall be properly installed, maintained, and operated and shall be removed by the permittee when no longer required by the division.

(f) Acid- and toxic-forming materials.

(1) Drainage from acid- and toxic-forming materials and underground development waste into surface water and ground water shall be avoided by:

(i) Identifying and burying and/or treating, when necessary, materials which may adversely affect water quality, or be detrimental to vegetation or to public health and safety if not buried and/or treated; and

(ii) Storing materials in a manner that will protect surface water and ground water by preventing erosion, the formation of polluted runoff, and the infiltration of polluted water. Storage shall be limited to the period until burial and/or treatment first become feasible, and so long as storage will not result in any risk of water pollution or other environmental damage.

(2) Storage, burial or treatment practices shall be consistent with other material handling and disposal provisions of this chapter.

(g) Transfer of wells. Before final release of bond, exploratory or monitoring wells shall be sealed in a safe and environmentally sound manner in accordance with 4 VAC 25-130-817.13 and 4 VAC 25-130-817.15. With the prior approval of the division, wells may be transferred to another party, or retained by the permittee for further use. However, at a minimum, the conditions of such transfer shall comply with State and local laws and the permittee shall remain responsible for the proper management of the well until bond release in accordance with 4 VAC 25-130-817.13 through 4 VAC 25-130-817.15.

(h) Discharges into an underground mine.

(1) Discharges into an underground mine are prohibited, unless specifically approved by the division after a demonstration that the discharge will:

(i) Minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area and otherwise eliminate public hazards resulting from underground mining activities;

(ii) Not result in a violation of applicable water quality standards or effluent limitations;

(iii) Be at a known rate and quality which shall meet the effluent limitations of 4 VAC 25-130-817.42 for pH and total suspended solids, except that the pH and total suspended solids limitations may be exceeded, if approved by the division; and

(iv) Meet with the approval of the Mine Safety and Health Administration.

(2) Discharges shall be limited to the following:

(i) Water;

(ii) Coal-processing waste;

(iii) Fly ash from a coal-fired facility;

(iv) Sludge from an acid-mine drainage treatment facility;

(v) Flue-gas desulfurization sludge;

(vi) Inert materials used for stabilizing underground mines; and

(vii) Underground mine development wastes.

(3) Water from one underground mine may be diverted into other underground workings according to the requirements of this section.

(i) Gravity discharges from underground mines.

(1) Surface entries and accesses to underground workings shall be located and managed to prevent or control gravity discharge of water from the mine. Gravity discharges of water from an underground mine, other than a drift mine subject to paragraph (i)(2) of this section, may be allowed by the division if it is demonstrated that the untreated or treated discharge complies with the performance standards of this part and any additional NPDES permit requirements.

(2) Notwithstanding anything to the contrary in paragraph (i)(1) of this section, the surface entries and accesses of drift mines first used after December 15, 1981, or the implementation of a Federal Lands Program in accordance with Part 740, and located in acid-producing or iron-producing coal seams shall be located in such a manner as to prevent any gravity discharge from the mine.

(3) *Except where surface entries and accesses to underground workings are located pursuant to paragraph (i)(1) of this section, an unmined barrier of coal shall be left in place where the coal seam dips toward the land surface. The unmined barrier and associated overburden shall be designed to prevent the sudden release of water that may accumulate in the underground workings.*

(i) The applicant may demonstrate the appropriate barrier width and overburden height by either:

(A) Providing a site specific design, certified by a licensed professional engineer, which considers the overburden and barrier characteristics; or

(B) Providing the greater of an unmined horizontal barrier width necessary to leave a minimum of 100 feet of vertical overburden, or an unmined barrier width calculated by the formula: $W=50+H$, when W is the minimum width in feet and H is the calculated hydrostatic head in feet.

(ii) An exception to the barrier requirement may be approved provided the division finds, based upon the geologic and hydrologic conditions, an accumulation of water in the underground workings cannot reasonably be expected to occur or other measures taken by the applicant are adequate to prevent the accumulation of water.

Documents Incorporated by Reference

Standard Methods for the Examination of Water and Wastewater, 17th Edition, 1989, American Public Health Association.

VA.R. Doc. No. R97-238; Filed January 15, 1997, 2:52 p.m.

DEPARTMENT OF STATE POLICE

REGISTRAR'S NOTICE: The amendments to the following regulation are exempt from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (c) of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Department of State Police will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 19 VAC 30-20-10 et seq. Motor Carrier Safety Regulations (amending 19 VAC 30-20-10 and 19 VAC 30-20-80).

Statutory Authority: § 52-8.4 of the Code of Virginia.

Effective Date: March 19, 1997.

Summary:

Amendment 7 adopts and incorporates by reference changes made by the U. S. Department of Transportation, Federal Highway Administration, to 49 CFR Parts 390 through 397 promulgated and in effect as of January 2, 1997. These changes include:

1. Amending 49 CFR Parts 390, 391, 392, 393, and 397 with technical amendments; correcting erroneous cross references; and changing references in which the regulations referred have been redesignated or removed. Amendments have been made to correct minor errors in the final rule and make conforming metrification changes;
2. Amending 49 CFR Part 391 to allow drivers currently holding valid waivers from both vision and diabetes standards contained in the Federal Motor Carrier Safety Regulations (FMCSR) to continue to operate in interstate commerce after March 31, 1996. This action also includes a technical amendment to relocate an existing

provision so that all limited exemptions from driver qualifications standards can be found in the same subpart;

3. Amending 49 CFR Part 395 to conform to statutory exemptions enacted by Congress in the National Highway System Designation Act of 1995. This act created certain exemptions from the FMCSR for employees engaged in the transportation of water drilling rigs, construction materials and equipment, and operation of utility service vehicles. The exemptions relate to the hours-of-service regulations;

4. Amending 19 VAC 30-20-10 by adding the definition of "planting and harvesting season" as it relates to these regulations only. This was necessary to comply with the amendment to 49 CFR Part 395.

Agency Contact: Copies of the regulation may be obtained for \$5.00 from Lieutenant Herbert B. Bridges, Department of State Police, Office of Administrative Coordination, Motor Carrier Safety, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 378-3489.

19 VAC 30-20-10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Commercial motor vehicle" means any self-propelled or towed vehicle used on the highways in interstate or intrastate commerce to transport passengers or property if (i) such vehicle has a gross vehicle weight rating or gross combination weight rating of more than 26,000 pounds, (ii) is designed to transport more than 15 passengers, including the driver, regardless of weight or (iii) is used to transport hazardous materials in a quantity requiring placards by regulations issued under authority of Article 7 (§10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia, Transportation of Hazardous Materials.

"Commissioner" means the Commissioner of the Department of Motor Vehicles of the Commonwealth.

"Motor carrier" means a common carrier by motor vehicle, a contract carrier by motor vehicle or a private carrier of property or passengers by motor vehicle. This term also encompasses any agent, officer, representative or employee who is responsible for hiring, supervision, training, assignment or dispatching of drivers.

"Planting and harvesting season" means January 1 to December 31 of each calendar year as it relates to these regulations only.

"Safety inspections" means the detailed examination of a vehicle for compliance with safety regulations promulgated under § 52-8.4 of the Code of Virginia and includes a determination of the qualifications of the driver and his hours of service.

"Superintendent" means the Superintendent of the Department of State Police of the Commonwealth of Virginia.

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"Transport vehicle" means any vehicle owned or leased by a motor carrier used in the transportation of goods or persons.

19 VAC 30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Highway Administration, with amendments promulgated and in effect as of January 2, 1996 1997, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 390 through 397, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.



COMMONWEALTH of VIRGINIA

E. M. MILLER, JR.
ACTING REGISTRAR OF REGULATIONS

JANE D. CHAFFIN
DEPUTY REGISTRAR

VIRGINIA CODE COMMISSION
General Assembly Building

910 CAPITOL STREET
RICHMOND, VIRGINIA 23219
(804) 786-3591
FAX (804) 692-0625

February 5, 1997

Col. M. Wayne Huggins, Superintendent
Department of State Police
P.O. Box 27472
Richmond, Virginia 23261-7472

Dear Colonel Huggins:

This letter acknowledges receipt of the Motor Carrier Safety Regulations (19 VAC 30-20-10 and 19 VAC 30-20-80) filed by the Department of State Police.

As required by § 9-6.14:4.1 C 4(c) of the Code of Virginia, I have determined that these regulations do not differ materially from regulations required by federal law and are, therefore, exempt from the operation of Article 2 of the Administrative Process Act.

Sincerely,

A handwritten signature in cursive script that reads "E. M. Miller, Jr. / jc".

E. M. Miller, Jr.
Acting Registrar of Regulations

VA.R. Doc. No. R97-239; Filed January 17, 1997, 10:39 a.m.

DEPARTMENT OF TRANSPORTATION (COMMONWEALTH TRANSPORTATION BOARD)

REGISTRAR'S NOTICE: The following regulation was filed by description with the Registrar of Regulations in accordance with § 2.3 of the Virginia Code Commission Regulations Implementing the Virginia Register Act. Section 2.3 of the Virginia Code Commission Regulations allows the Registrar to authorize the filing of a regulatory document by description in lieu of filing the entire text pursuant to criteria identified in that section.

Title of Regulation: 24 VAC 30-310-10. Supplement to Uniform Traffic Control Devices Manual.

Statutory Authority: §§ 33.1-12 and 46.2-830 of the Code of Virginia.

Effective Date: January 17, 1997.

Exemptions Claimed:

This regulation is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1 B 11 of the Code of Virginia, which exempts agency action relating to traffic signs, markers or control devices. Subdivision 3 of § 2.3 of the Virginia Code Commission Regulations allows regulations to be filed by description subject to the authorization of the Registrar of Regulations when the size of the document's pages differs significantly from the standard page size of the Virginia Register of Regulations or the Virginia Administrative Code.

Description:

By resolution dated November 20, 1980, the State Highway and Transportation Commission adopted the Virginia Supplement to the Manual on Uniform Traffic Control Devices. A subsequent board resolution dated February 18, 1988, referred to the need to keep the classification, marking, and signing of highway systems current. Therefore, the resolution affirmed current and revised versions to the federal Manual on Uniform Traffic Control Devices (filed as 24 VAC 30-300-10) as the standard for all highways under the Department of Transportation's jurisdiction. The resolution also affirmed current and revised versions of the Virginia supplement as promulgating state standards for traffic control devices that exceed minimum federal requirements and present pertinent traffic control parameters not addressed by the federal Manual on Uniform Traffic Control Devices.

Effective January 1996, Part VI of the Virginia Supplement to the Manual on Uniform traffic Control Devices for Streets and Highways (MUTCD) was made available to users of the Virginia supplement as a separate document entitled Virginia Work Area Protection Manual. This approach was taken to accommodate changes in federal regulations, as well as to improve its utility as a teaching tool. The Virginia Work Area Protection Manual retains the same numbering

format and is still part of the Virginia Supplement to the Manual on Uniform Traffic Control Devices.

Document available for inspection at the following location:

*Virginia Department of Transportation
Traffic Engineering Division
1401 E. Broad St., Room 206
Richmond, VA 23219*

VA.R. Doc. No. R97-240; Filed January 17, 1997, 2:31 p.m.

STATE WATER CONTROL BOARD

REGISTRAR'S NOTICE: The State Water Control Board has claimed an exemption from the Administrative Process Act in accordance with § 9-6.14:4.1 C 4 (a) of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9 VAC 25-260-10 et seq. Water Quality Standards (amending 9 VAC 25-260-30).

Statutory Authority: § 62.1-44.15 (3) and (10) of the Code of Virginia.

Effective Date: March 19, 1997.

Summary:

The amendment sets forth in the regulation statutory requirements passed by the 1996 General Assembly. Specifically the amendment requires the State Water Control Board to, upon receipt of a nomination of a waterway for designation as an exceptional state water, notify each locality and impacted property owner of the nomination. The amendment also sets forth the information to be included in the notice.

Agency Contact: Copies of the regulation may be obtained from Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4113.

9 VAC 25-260-30. Antidegradation policy.

A. Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

B. Waters whose existing quality is better than the established standards as of the date on which such standards become effective will be maintained at the existing quality; provided that the board has the power to authorize any project or development, which would constitute a new or an increased loading of pollutants to high quality water, when it has been affirmatively demonstrated that a change is necessary to provide important economic or social development in the area in which the waters are located. Present and anticipated use of such waters will be preserved and protected.

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1. A new or increased discharge is defined as a newly constructed facility or an existing facility which requests a significant increase in its loading of one or more of the constituents listed in 9 VAC 25-260-140 B.

2. In considering whether a possible significant change in water quality is necessary to provide important economic or social development, the board will provide notice and opportunity for a public hearing so that interested persons will have an opportunity to present information and the board will satisfy the requirement of intergovernmental coordination as part of the Commonwealth's continuing planning process.

3. Upon a finding that such change is justifiable, the change nevertheless, must not result in violation of those water quality characteristics necessary to attain the water quality goals in 9 VAC 25-260-20 A of protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water. Further, if a change is considered justifiable, it must not result in any significant loss of marketability or recreational use of fish, shellfish or other marine resources, and all practical measures should be taken to eliminate or minimize the impact on water quality.

4. When degradation or lower water quality is allowed, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new and existing point sources to the water body and all cost-effective and reasonable best management practices for nonpoint source control which are under the jurisdiction of the board.

5. Any determinations concerning thermal discharge limitations made under Section § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

C. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in 9 VAC 25-260-30 C 1, 2 and 3.

1. Designation procedures.

a. Designations shall be adopted in accordance with the provisions of the Administrative Process Act and the board's public participation guidelines. As part of the process, the board shall, when considering regulatory action to designate any waters under this section, take all reasonable steps to notify potentially impacted parties, including local governments, of the board's intent and the estimated impacts of any possible designation.

b. Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall provide notice to impacted property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and

criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. After receipt of the notice of the nomination localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

2. Implementation procedures.

a. The quality of waters designated in 9 VAC 25-260-30 C 3 shall be maintained and protected to prevent permanent or long-term degradation or impairment.

b. No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in 9 VAC 25-260-30 C 3 shall be allowed.

c. Nonpermitted activities causing temporary sources of pollution, which are under the jurisdiction of the board, may be allowed in waters designated in 9 VAC 25-260-30 C 3 even if degradation may be expected to temporarily occur as long as after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

3. Reserved for Future Designations of waters defined in 9 VAC 25-260-30 C.

VA.R. Doc. No. R97-259; Filed January 29, 1997, 11:41 a.m.

EMERGENCY REGULATIONS

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: 12 VAC 30-50-10 et seq. Amount, Duration and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-95, 12 VAC 30-50-100 and 12 VAC 30-50-140).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-20 and 12 VAC 30-60-60; adding 12 VAC 30-60-25).

Statutory Authority: Sec. 32.1-325 of the Code of Virginia and Chapter 912 of the 1996 Acts of Assembly.

Effective Dates: January 22, 1997, through January 21, 1998.

BACKGROUND: The sections of the State Plan affected by this action are the Narrative for the Amount, Duration, and Scope of Services (Attachment 3.1A&B, Supplement 1 for Inpatient Hospital Services) and Standards Established and Methods Used to High Quality of Care (Attachment 3.1-C).

Currently, the utilization control method for inpatient hospitalization in general acute care hospitals is a post-service pre-payment review methodology. DMAS utilization review analysts review inpatient hospital claims which have been identified during processing for such reasons as lengths of stay greater than three days, Saturday/Sunday admissions, inpatient days billed prior to surgery, and outpatient procedures performed during an inpatient stay, for example. These edited claims are reviewed against DMAS' medical criteria to determine if there is justification for the inpatient admission and the billed length of stay. The DMAS utilization review analysts then either approve payment, deny payment, or reduce the approved reimbursement for such hospital stays based on the criteria, professional judgment, and any covered service restrictions in the State Plan.

Language in the 1996 Appropriations Act, Item K, indicates that "effective on or after July 1, 1996, the Department of Medical Assistance Services shall implement a fully prospective reimbursement system for hospital services. For inpatient hospital services, it shall use a Diagnosis Related Groups (DRG) methodology." The language further states that "in addition, the Board of Medical Assistance Services shall revise its regulations governing its utilization control measures (preauthorization and utilization review) so as to make them consistent with a prospective DRG reimbursement methodology." By initiating the proposed utilization control methodologies, DMAS will be performing pre-authorization of all inpatient hospitalizations in both general acute care hospitals and free-standing psychiatric hospitals.

Utilization management will consist of telephonic pre-admission review by reviewers who are health care professionals. The provider requesting authorization for admission will provide the nurse reviewer with the admission diagnosis, signs and symptoms of illness, and the intended plan of care. The nurse will apply criteria specified by DMAS against the information provided. Additional documentation

(such as special information required for the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program) may be required by the nurse reviewer prior to authorizing admission and can be provided via telefax. If admission is deemed justified, the nurse reviewer will assign a pre-authorization number (a control number needed for claims processing purposes) and an initial length of stay.

Prior to the expiration of the assigned initial length of stay, the provider of services will telephone a nurse reviewer to discuss the patient's condition and the plan of care, and medical need for further inpatient care, should the patient's condition require it. Additional documentation may be requested via telefax or other means to determine the need for additional length of stay. The nurse reviewer will again apply criteria specified by DMAS against the information provided and determine if continued inpatient hospitalization is justified. If appropriate, an additional length of stay will be assigned. Such reviews, performed concurrently with the hospital stay and known as concurrent review, will continue in a like manner until the discharge of the patient.

If either an admission or length of stay is determined to not be justified, the provider will have an immediate reconsideration opportunity to present additional information to clarify and further explain the need for inpatient hospitalization. All telephonic review and reconsideration determinations will be followed by written notification of decisions. Emergency admissions, or admissions occurring after normal working hours or on holidays will require authorization within one working day following the admission. Retrospective review will be conducted in cases of retroactive eligibility determinations. It will be the providers responsibility to obtain the required authorization prior to billing DMAS for reimbursement.

These utilization control methods will provide a standard against which all inpatient hospitalizations will be judged and will guard against payment for unjustified inpatient hospitalizations. Currently, with the utilization controls in place, DMAS performs a prepayment, but post-service delivery review, and payment of pending claims for general inpatient hospital services. Preauthorization is currently performed for all admissions (under EPSDT) to freestanding psychiatric facilities. With the preauthorization requirement for all inpatient hospital services, DMAS expects it to either be budget neutral or to realize slight savings which cannot be measured at this time. DMAS is seeking an appropriate private contractor to provide the preauthorization services for both general inpatient care and freestanding psychiatric care, as described above, consistent with this administration's priorities.

While cost control and ultimately cost savings are key advantages to the Commonwealth with the institution of preauthorization, there are several advantages to the provider and recipient population as well. The providers will be afforded the opportunity to discuss the condition and medical plan of care with a healthcare professional who will consistently apply established criteria to the information presented. Providers will know in advance of service provision if criteria for reimbursement are met and if reimbursement can be expected. If inpatient hospitalization is not deemed necessary, the contractor's nurse reviewer will

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attempt to discuss with the provider other alternatives for providing appropriate medical care.

Clarifying language is being added to the coverage of psychiatric services so that the referenced language clearly refers to outpatient care. The 26 visit limit and the three visits in seven days stated in this section (12 VAC 30-50-140) are not otherwise affected by psychiatric care obtained in the inpatient setting in either a general acute care hospital or a freestanding psychiatric facility.

AUTHORITY TO ACT: The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirements. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency intends to initiate the public notice and comment process contained in Article 2 of the APA contingent upon the outcome of deliberations by the U.S. Congress over the 1995 Medicaid Transformation Act ('95 MTA). Should this Act, also known as Medigrant, take effect and supersede Title XIX, DMAS will be required to respond in this initiative within the constraints of the new title.

Without an emergency regulation, this amendment to the State Plan or regulation cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore, an emergency regulation is needed to meet the effective date consistent with DMAS' efforts to contract out this pre-authorization approval process. DMAS must quickly replace its inpatient hospital services utilization review regulations because the current ones do not support the current reimbursement methodology. The current Diagnosis Related Grouping reimbursement methodology became effective July 1, 1996, under the authority of an emergency regulation.

NEED FOR EMERGENCY ACTION: The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with this provision in the 1996 Appropriations Act, he has implemented the Diagnosis Related Groupings payment methodology for inpatient hospital services, executed a contract with the approved bidder, and proposed this regulation for adoption. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the appropriation act ... requires this regulation be effective within 280 days from the enactment of the law or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

FISCAL/BUDGETARY IMPACT: This prior authorization policy is integral to the implementation of the Diagnosis Related Groupings policy (the new inpatient hospital reimbursement methodology) already implemented by

emergency regulation. The transition from the previous per diem methodology to the current DRG/prior authorization methodology is intended to be budget neutral. However, without the prior authorization component proposed in this emergency regulation package, DMAS expects to incur at least \$3,000,000 in additional expenditures.

There is no anticipated fiscal impact on recipients. While total payments to inpatient hospitals are not expected to change, payments to individual enrolled hospital providers may change due to the transition in the payment methodology. The fiscal impact will probably be felt most by the hospitals which are currently exempt from review or those having a delegated review status. Most of the inpatient claims for these hospitals are paid without any DMAS prepayment review. With the onset of preauthorization, there will be no exemptions or delegated review statuses granted. All inpatient hospitalizations will have to be authorized prior to reimbursement without exception. DMAS expenditures for inpatient hospitalizations for fiscal year 1994 were \$359,000,000 and for fiscal 1995 were \$415,000,000. As previously stated, DMAS expects the DRG/hospital preauthorization to be budget neutral.

RECOMMENDATION: Recommend approval of this request to adopt this emergency regulation to become effective once adopted upon its filing with the Registrar of Regulations consistent with DMAS contracting activities. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations, contingent upon '95 MTA, promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to require that general acute care hospitals submit all requests for inpatient admissions to the contractor for review and pre-authorization.

APPROVAL SOUGHT FOR 12 VAC 30-50-95 and 12 VAC 30-60-10 through 30-60-20

Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

12 VAC 30-50-95. General

The provision of the following services cannot be reimbursed except when they are ordered or prescribed, and directed or performed within the scope of the license of a practitioner of the healing arts: laboratory and x-ray services, family planning services, and home health services. Physical therapy services will be reimbursed only when prescribed by a physician. *Inpatient acute hospitalizations will be reimbursed only if the stay has been authorized.*

12 VAC 30-50-100. Inpatient hospital services other than those provided in an institution for mental diseases provided at general acute care hospitals and free-standing psychiatric hospitals.

A. Enrolled providers.

A. 1. ~~(Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 8 days that exceed the 75th percentile, the hospital must attach~~

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~~medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 14 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to item F below.) Preauthorization of all inpatient hospital services will be performed. This applies to both general hospitals and free-standing psychiatric hospitals. Non-authorized inpatient services will not be covered or reimbursed by the Department of Medical Assistance Services (DMAS). Preauthorization shall be based on criteria specified by DMAS. In conjunction with pre-authorization, an appropriate length of stay will be assigned, using the current HCIA Length of Stay by Diagnosis and Operation as guidelines.~~

a. Admission review shall be done to determine that inpatient hospitalization is medically justified. An initial length of stay shall be assigned.

b. Concurrent review shall be done to determine that inpatient hospitalization continues to be medically necessary. Prior to the expiration date of the previously assigned initial length of stay, the provider shall be responsible for obtaining authorization for continued inpatient hospitalization. If continued inpatient hospitalization is determined necessary, an additional length of stay shall be assigned. Concurrent review shall continue in the same manner until the discharge of the patient from acute inpatient hospital care.

c. Retrospective review shall be performed when a provider is notified of a patient's retroactive eligibility for Medicaid coverage. It shall be the provider's responsibility to obtain authorization for covered days prior to billing DMAS for these services.

d. A reconsideration process shall be available to providers and an appeals process shall be available to recipients who wish to challenge adverse authorization decisions made during any of the above described review processes. The first reconsideration step shall be conducted telephonically between the Utilization Management Supervisor ("UMS") and the provider requesting authorization for admission or continued inpatient hospital staff. If the UMS upholds the adverse decision and the provider continues to disagree with the decision, the reconsideration progresses to the next step. The second reconsideration step shall be conducted telephonically between the DMAS physician consultant and the provider. If the DMAS physician consultant upholds the adverse decision and the provider continues to disagree with the decision, the Medicaid recipient shall have the right to appeal the adverse decision under the Client Appeals Regulations at 12 VAC 30-110-Part 1. If the issue is whether DMAS will reimburse the provider for services already provided, the provider shall follow the reconsideration process outlined above. If the reconsideration steps are exhausted, and the provider continues to disagree, the provider shall have the right to file an appeal. The appeal shall

~~be held in accordance with Code of Virginia 9-6.14 et seq.~~

B. 2. Medicaid does not pay the Medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to item F 4 below.)

C. 3. Reimbursement for induced abortions is provided in only those cases in which there would be substantial endangerment to health or life of the mother if the fetus were carried to term.

~~D. Reimbursement for covered hospital days is limited to one day prior to surgery, unless medically justified. Hospital claims with an admission date more than one day prior to the first surgical date will pend for review by medical staff to determine appropriate medical justification. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for additional pre-operative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.~~

~~E. Reimbursement will not be provided for weekend (Friday/Saturday) admissions, unless medically justified. Hospital claims with admission dates on Friday or Saturday will be pended for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.~~

F. 4. Coverage of inpatient hospitalization will ~~shall~~ be limited to a total of 21 days per admission for all admissions within a fixed in a 60 day period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission for the same or similar diagnosis and/or treatment plan. The 60 day period would begin on the hospitalization admission date. There may be multiple admissions during this 60 day period; however, when total days exceed 21, all subsequent claims will be reviewed. Claims which exceed 21 days per admission within 60 days, for the same or similar diagnosis, and/or treatment plan, will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis and/or medical justification will be paid treatment plan, will be considered for authorization, if medically indicated. Any claim which has the same or similar diagnosis will be denied. EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under twenty-one (21) years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities general hospitals and freestanding psychiatric hospitals in excess of

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~~twenty one (21) days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on invoice for review by medical staff to determine medical necessity. The admission and length of stay must be medically justified and pre-authorized via the admission and concurrent review processes described above. Medically unjustified days in such admissions will be denied hospitalizations shall not be authorized for payment by DMAS. Regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60 day period. Claims for stays exceeding 21 days in a 60 day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days shall cease with dates of service on or after July 1, 1998.~~

~~G. 5. Reserved. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically justified.~~

~~H. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period. Coverage in free-standing psychiatric hospitals shall not be available for individuals aged 21 through 64. Inpatient psychiatric care rendered in a psychiatric unit of a general acute care hospital shall be covered for all Medicaid eligible individuals, regardless of age, within the limits of coverage prescribed in 12 VAC 30-50-100.~~

~~I. 6. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. Inpatient hospitalization related to kidney transplantation will require pre-authorization at the time of admission, and concurrently, for length of stay. Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require pre-authorization for admission, and concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone~~

~~marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover: procurement costs; all hospital costs from admission to discharge for the transplant procedure; total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pre-transplant evaluation. Reimbursement for approved transplant procedures that are performed out-of-state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.~~

~~J. 7. The Department may exempt portions or all of the utilization review documentation requirements of subsections (A), (D), (E), (F) as it pertains to recipients under age 21, (G), or (H) in writing for specific hospitals from time to time as part of their ongoing hospital utilization review performance evaluation. These exemptions are based on utilization review performance and review edit criteria which determine an individual hospital's review status as specified in the hospital provider manual. In compliance with federal regulations at 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed, shall be subject to medical documentation requirements review of the required DMAS forms corresponding to the beforementioned procedures. Regardless of authorization for the hospitalization during which these procedures were performed, the claims shall suspend for manual review. If the forms are not properly completed, or not attached to the bill, the claim will be denied or reduced according to DMAS policy.~~

~~K. 8. Hospitals qualifying for an exemption of all documentation requirements except as described in J above shall be granted "delegated review status" and shall, while the exemption remains in effect, not be required to submit medical documentation to support pending claims on a prepayment hospital utilization review basis to the extent allowed by federal or state law or regulation. The following audit conditions apply to delegated review status for hospitals: To determine that the DMAS enrolled hospital providers are in compliance with the regulations governing hospital utilization control found in the Code of Federal Regulations, 42 CFR §456.50, and the regulations governing mental hospital utilization control found in the 42 CFR §456.150, an annual audit will be conducted of each enrolled hospital. This audit can be performed either on-site or as a desk audit. The hospital shall make all requested records available and shall provide an appropriate place for the~~

auditors to conduct such review if done on-site. The audits shall consist of review of the following:

~~1. The Department shall conduct periodic on-site post payment audits of qualifying hospitals using a statistically valid sampling of paid claims for the purpose of reviewing the medical necessity of inpatient stays.~~

a. Copy of the general hospital's Utilization Management Plan to determine compliance with the regulations found in the 42 CFR §§456.100 through 456.145 and for free-standing psychiatric hospitals, as required in the 42 CFR §§456.200 through 456.245.

~~2. The hospital shall make all medical records of which medical reviews will be necessary available upon request, and shall provide an appropriate place for the Department's auditors to conduct such review.~~

b. List of current Utilization Management Committee members and physician advisors to determine that the committee's composition is as prescribed in the 42 CFR §§456.105 through 456.106, and for free-standing psychiatric hospitals, as prescribed in the 42 CFR §§456.205 through 456.206.

~~3. The qualifying hospital will immediately refund to the Department in accordance with §32.1-325.1 A and B of the Code of Virginia the full amount of any initial overpayment identified during such audit.~~

c. Verification of Utilization Management Committee meetings since the last annual audit, including dates and list of attendees to determine that the committee is meeting according to their Utilization Management meeting requirements.

~~4. The hospital may appeal adverse medical necessity and overpayment decisions pursuant to the current administrative process for appeals of post-payment review decisions.~~

d. One completed Medical Care Evaluation Study to include objectives of the study, analysis of the results, and actions taken, or recommendations made to determine compliance with the 42 CFR §§456.141 through 456.145, and for free-standing psychiatric hospitals, as required in the 42 CFR §§456.241 through 456.245.

~~5. The Department may, at its option, depending on the utilization review performance determined by an audit based on criteria set forth in the hospital provider manual, remove a hospital from delegated review status and reapply certain or all prepayment utilization review documentation requirements.~~

e. Topic of one on-going Medical Care Evaluation Study to determine the hospital is in compliance with the 42 CFR §456.145, and for free-standing psychiatric hospitals, as required in the 42 CFR §456.245.

f. From a list of randomly selected paid claims, the hospital must provide a copy of the physician admission certification and written plan of care for each selected stay to determine the hospital's

compliance with the 42 CFR §§456.60 and 456.80. From a list of randomly selected paid claims, the free-standing psychiatric hospital must provide a copy of the physician admission certification, a copy of the required medical, psychiatric, and social evaluations, and the written plan of care for each selected stay to determine the hospital's compliance with the 42 CFR §§456.160, 456.170, and §§456.180 through 456.181.

g. The hospitals may appeal in accordance with the Code of Virginia 9-6.14:1 et seq. any adverse decision resulting from such audits which results in retraction of payment.

B. Non-Enrolled Providers.

1. Inpatient hospital services, when rendered by non-enrolled providers, shall not require preauthorization with the exception of transplants as described in subsection 10 below.

A. 2. Medicaid inpatient hospital admissions (lengths-of-stay) are limited to the 75th percentile of PAS (Professional Activity Study of the Commission on Professional and Hospital Activities) diagnostic/procedure limits. For admissions under 4 days that exceed the 75th percentile, the hospital must attach medical justification records to the billing invoice to be considered for additional coverage when medically justified. For all admissions that exceed 3 days up to a maximum of 21 days, the hospital must attach medical justification records to the billing invoice. (See the exception to subsection F of this section.)

B. 3. Medicaid does not pay the Medicare (Title XVIII) coinsurance for hospital care after 21 days regardless of the length-of-stay covered by the other insurance. (See exception to subsection F 7 of this section.)

C. 4. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment to health or life of the mother if the fetus were carried to term.

D. 5. Hospital claims with an admission date prior to the first surgical date, regardless of the number of days prior to surgery, must be medically justified. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement for all pre-operative days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital setting thereby warranting hospital admission. Medically unjustified days in such admissions will be denied.

E. 6. Reimbursement will not be provided for weekend (Saturday/Sunday) admissions, unless medically justified. Hospital claims with admission dates on Saturday or Sunday will be pending for review by medical staff to determine appropriate medical justification for these days. The hospital must write on or attach the justification to the billing invoice for consideration of reimbursement coverage for these days. Medically justified situations are those where appropriate medical care cannot be obtained except in an acute hospital

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setting thereby warranting hospital admission. Medically unjustified days in such admission will be denied.

F. 7. Coverage of inpatient hospitalization will shall be limited to a total of 21 days *per admission* for ~~all admissions within a fixed in a 60 day period, which would begin with the first day inpatient hospital services are furnished to an eligible recipient and end 60 days from the day of the first admission for the same or similar diagnosis and/or treatment plan. The 60 day period would begin on the hospitalization admission date.~~ There may be multiple admissions during this 60 day period; however, when total days exceed 21, all subsequent claims will be reviewed. ~~Claims which exceed 21 days per admission within 60 days, for the same or similar diagnosis, and/or treatment plan, will not be authorized for payment. Claims which exceed 21 days per admission within 60 days with a different diagnosis and/or medical justification will be paid treatment plan, will be considered for authorization, if medically indicated. Any claim which has the same or similar diagnosis will be denied.~~ EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under ~~twenty one (21)~~ years of age, who are Medicaid eligible, for medically necessary stays in ~~general hospitals and freestanding psychiatric facilities acute care facilities~~ in excess of ~~twenty one (21)~~ days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. ~~Medical documentation justifying admission and the continued length of stay must be attached to or written on invoice for review by medical staff to determine medical necessity. The admission and length of stay must be medically justified and pre-authorized via the admission and concurrent review processes described above. Medically unjustified days in such admissions will be denied hospitalizations shall not be authorized for payment by DMAS. Regardless of authorization for the hospitalization, the claims will be processed in accordance with the limit for 21 days in a 60 day period. Claims for stays exceeding 21 days in a 60 day period shall be suspended and processed manually by DMAS staff for appropriate reimbursement. The limit for coverage of 21 days shall cease with dates of service on or after July 1, 1998.~~

G. 8. Coverage for a normal, uncomplicated vaginal delivery shall be limited to the day of delivery plus an additional two days unless additional days are medically justified. Coverage for cesarean births shall be limited to the day of delivery plus an additional four days unless additional days are medically necessary. ~~Reserved.~~

H. 9. Reimbursement will not be provided for inpatient hospitalization for those surgical and diagnostic procedures listed on the mandatory outpatient surgery list unless the inpatient stay is medically justified or meets one of the exceptions. The requirements for mandatory outpatient surgery do not apply to recipients in the retroactive eligibility period.

I. 10. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow transplantation and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. *Inpatient hospitalization related to kidney transplantation will require pre-authorization at the time of admission and concurrently, for length of stay.* Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require pre-authorization for admission and concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover: procurement costs; all hospital costs from admission to discharge for the transplant procedure; total physician costs for all physicians providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee does not include pre- and post-hospitalization for the transplant procedure or pre-transplant evaluation. Reimbursement for approved transplant procedures that are performed out of state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplant is at the allowed Medicaid rate. Standards for coverage of organ transplant service are in 12VAC30-50-540.

VAC 30-50-140.

5. *Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere.*

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well child examination is performed in a private physician's office for a foster child of the local social

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services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services are limited to an initial availability of 26 sessions, with one possible extension (subject to the approval of the Psychiatric Review Board) of 26 sessions during the first year of treatment. The availability is further restricted to no more than 26 sessions each succeeding year when approved by the Psychiatric Review Board. Psychiatric services are further restricted to no more than three sessions in any given seven day period.

2. Psychiatric services can be provided by psychiatrists, clinical psychologists licensed by the State Board of Medicine, psychologists clinical licensed by the Board of Psychology, or by a licensed clinical social worker under the direct supervision of a psychiatrist, licensed clinical psychologist or a licensed psychologist clinical.

3. Psychological and psychiatric services shall be medically prescribed treatment which is directly and specifically related to an active written plan designed and signature-dated by either a psychiatrist or a clinical psychologist licensed by the Board of Medicine, a psychologist clinical licensed by the Board of Psychology, or a licensed clinical social worker under the direct supervision of a licensed clinical psychologist, a licensed psychologist clinical, or a psychiatrist.

4. Psychological or psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels which have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, and/or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

5. Psychological or psychiatric services may be provided in an office or mental health clinic.

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of health or life to the mother if the fetus were carried to term.

G. Physician visits to inpatient hospital patients, over the age of 21, are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses and/or

treatment plan, and is further restricted to medically necessary authorized inpatient hospital days.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in ~~acute care facilities general hospitals and freestanding psychiatric facilities~~ in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Payments for physician visits for inpatient days ~~determined to be medically unjustified will be adjusted. shall be limited to medically necessary authorized inpatient hospital days.~~

H. Psychological testing and psychotherapy by clinical psychologists licensed by the State Board of Medicine and psychologists clinical licensed by the Board of Psychology are covered. Psychological testing done for the purpose of educational diagnosis, school admission or placement and those for social behavior modification are non-covered.

I. Reserved.

J. ~~Reimbursement will not be provided for physician services performed in the inpatient setting for those surgical or diagnostic procedures listed on the mandatory outpatient surgery list unless the service is medically justified or meets one of the exceptions. The requirements of mandatory outpatient surgery do not apply to recipients in a retroactive eligibility period. Reserved.~~

K. For purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys and corneas shall be covered for all eligible persons. Transplant services for liver, heart, and bone marrow and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization. *Inpatient hospitalization related to kidney transplantation will require pre-authorization at the time of admission, and concurrently, for length of stay.* Cornea transplants do not require preauthorization of the procedure, but inpatient hospitalization related to such transplants will require pre-authorization for admission, and concurrently, for length of stay. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Reimbursement for covered liver, heart, and bone marrow transplant services and any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be a fee based upon the greater of a prospectively determined, procedure-specific flat fee determined by the agency or a prospectively determined, procedure-specific percentage of usual and customary charges. The flat fee reimbursement will cover: procurement costs; all hospital costs from admission to discharge for the transplant procedure; total physician costs for all physicians

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providing services during the transplant hospital stay, including radiologists, pathologists, oncologists, surgeons, etc. The flat fee reimbursement does not include pre- and post-hospitalization for the transplant procedure or pre-transplant evaluation. Reimbursement for approved transplant procedures that are performed out-of-state will be made in the same manner as reimbursement for transplant procedures performed in the Commonwealth. Reimbursement for covered kidney and cornea transplants is at the allowed Medicaid rate. Standards for coverage of organ transplant services are in Attachment 3.1 E.

12 VAC 30-60-10. Institutional care.

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

12 VAC 30-60-20. Utilization Control: General Acute Care Hospitals.

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

~~a. DMAS shall monitor, consistent with State law, the utilization of all inpatient hospital services. All inpatient hospital stays shall be preauthorized prior to admission. Services rendered without such prior authorization shall not be covered, except as stated in b. and c. below.~~

~~b. If a provider has rendered inpatient services to an individual who later is determined to be Medicaid eligible, it shall be the provider's responsibility to obtain the required authorization prior to billing the DMAS for these services.~~

~~c. If a Medicaid eligible individual is admitted to inpatient hospital care, on a Saturday, Sunday or holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such admission.~~

~~d. Regardless of preauthorization, in the following cases, hospital inpatient claims shall continue to suspend for DMAS' review before reimbursement is~~

~~approved. DMAS shall review all claims for individuals over the age of 21 which suspend for exceeding the 21 day limit per admission in a 60 day period for the same or similar diagnoses prior to reimbursement for the stay. This suspend shall cease with dates of service on or after July 1, 1998. DMAS shall review all claims which suspend for sterilization, hysterectomy, or abortion procedures for the presence of the required federal and state forms prior to reimbursement. If the forms are not attached to the bill and not properly completed, reimbursement for the services rendered will be denied or reduced, according to DMAS policy.~~

~~e. In addition, an annual audit will be performed to evaluate a hospital's compliance with the requirements for control of utilization of inpatient services found in the 42 CFR, Chapter IV, Subpart C, 456.50-456.145.~~

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

a. A physician must certify at the time of admission, or if later, the time the individual applies for medical assistance under the State Plan that the individual requires inpatient hospital or mental hospital care, or at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient hospital care.

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

c. Such services were furnished under a plan established and periodically reviewed and evaluated by a physician for inpatient hospital or mental hospital services. The physician has a written plan of care for each individual receiving inpatient hospital care and the physician periodically reviews and evaluates the need for revision to the plan.

12 VAC 30-60-25. Freestanding psychiatric hospitals.

These services shall only be covered for eligible persons younger than 21 years of age and older than 64 years of age.

1. Prior authorization required.

a. DMAS shall monitor, consistent with state law, the utilization of all inpatient free-standing psychiatric hospital services. All inpatient hospital stays shall be preauthorized prior to reimbursement for these services. Services rendered without such prior authorization shall not be covered.

b. In addition, an annual audit will be performed to evaluate a free-standing psychiatric hospital's compliance with the requirements for control of utilization of inpatient services found in the 42 CFR §§456.150-456.245.

2. In each case for which payment for free-standing psychiatric hospital services is made under the State Plan:

- a. A physician must certify at the time of admission, or at the time the hospital is notified of an individual's retroactive eligibility status, that the individual requires or required inpatient services in a free-standing psychiatric hospital consistent with §456.160.
 - b. The physician, or physician assistant or nurse practitioner acting within the scope of practice as defined by state law and under the supervision of a physician, must recertify, at least every 60 days, that the individual continues to require inpatient services in a psychiatric hospital.
 - c. Before admission to a free-standing psychiatric hospital or before authorization for payment, the attending physician or staff physician must perform a medical evaluation of the individual; and appropriate professional personnel must make a psychiatric and social evaluation as cited in the 42 CFR §456.170.
 - d. Before admission to a free-standing psychiatric hospital or before authorization for payment the attending physician or staff physician must establish a written plan of care for each recipient patient as cited in the 42 CFR §§456.180 and 441.155.
3. Must be 65 years of age or older.
4. If younger than 21 years of age, it shall be documented that the individual requiring admission to a free-standing psychiatric hospital is under 21 years of age, that treatment is medically necessary and that the necessity was identified as a result of an Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screening. Required patient documentation shall include, but not be limited to, the following:
- a. An EPSDT physician's screening report showing the identification of the need for further psychiatric evaluation and possible treatment.
 - b. A diagnostic evaluation documenting a current (active) psychiatric disorder included in the DSM-III-R that supports the treatment recommended. The diagnostic evaluation must be completed prior to admission.
 - c. For admission to a free-standing psychiatric hospital, for psychiatric services resulting from an EPSDT screening, a certification of the need for services as defined at 42 CFR §441.152 by an interdisciplinary team meeting the requirements of 42 CFR §441.153 or §441.156 and the Code of Virginia §§16.1-335 through 16.1-348.
 - d. If a Medicaid eligible individual is admitted in an emergency to a free-standing psychiatric hospital on a Saturday, Sunday, holiday, or after normal working hours, it shall be the provider's responsibility to obtain the required authorization on the next work day following such an admission.
 - e. The absence of any of the above required documentation shall result in DMAS' denial of the requested preauthorization and coverage of subsequent hospitalization.

~~12 VAC 30-60-60. Psychiatric Services resulting from an EPSDT screening. Consistent with the Omnibus Budget Reconciliation Act of 1989 §6403 and §4b to Attachment 3.1 A & B Supplement 1, psychiatric services shall be covered, based on their prior authorization of medical need, for individuals younger than 21 years of age when the need for such services has been identified in a screening as defined by the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. The following utilization control requirements shall be met before preauthorization of payment for services can occur.~~

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

~~"Admission" means the provision of services that are medically necessary and appropriate, and there is 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:~~

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~~(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.~~

/s/ Joseph M. Teefey
Director
Date: November 5, 1996

Approved:

/s/ Robert W. Lauterberg
Department of Planning and Budget
Date: November 15, 1996

Approved:

/s/ Robert C. Metcalf
Secretary of Health and Human Resources
Date: November 18, 1996

/s/ George Allen
Governor
Date: December 9, 1996

VA.R. Doc. No. R97-242; Filed January 22, 1997, 10:05 a.m.

Title of Regulation: 12 VAC 30-50-10 et seq. Amount, Duration, and Scope of Medical and Remedial Care and Services (amending 12 VAC 30-50-220 and 12 VAC 30-50-510; adding 12 VAC 30-50-223 and 12 VAC 30-50-225 through 12 VAC 30-50-229).

12 VAC 30-60-10 et seq. Standards Established and Methods Used to Assure High Quality Care (amending 12 VAC 30-60-140; adding 12 VAC 30-60-141 through 12 VAC 30-60-149).

12 VAC 30-130-10 et seq. Amount, Duration and Scope of Selected Services (amending 12 VAC 30-130-540 through 12 VAC 30-130-590; adding 12 VAC 30-130-565).

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

Effective Dates: January 22, 1997, through January 21, 1998.

1. REQUEST: The Governor is hereby requested to approve this agency's adoption of the emergency regulation entitled Community Mental Health, Mental Retardation, and Substance Abuse Services. This regulation will permit coverage of new services through local community services boards.

2. RECOMMENDATION: Recommend approval of the Department's request to take an emergency adoption action regarding Community Mental Health, Mental Retardation, and Substance Abuse Services. The Department intends to initiate the public notice and comment requirements contained in the Code of Virginia § 9-6.14.7.1.

/s/ Joseph M. Teefey
Director
Date: January 9, 1997

3. CONCURRENCES:

/s/ Robert W. Lauterberg
Department of Planning and Budget
Date: January 16, 1997

4. ACTION:

/s/ George Allen
Governor
Date: January 20, 1997

5. FILED WITH:

Registrar of Regulations
Date: January 22, 1997

DISCUSSION

6. BACKGROUND: The sections of the State Plan affected by this action are the Narrative for the Amount, Duration and Scope of Services (Supplement 1 to Attachment 3.1 A&B (VR 460-03-3.1100)) and Methods and Standards Used to Assure High Quality of Care (Attachment 3.1-C) (VR 460-02-3.1300). The regulations affected by this action are Community Mental Health/Mental Retardation/Substance Abuse Services-Amount, Duration, and Scope of Services (VR 460-04-8.1500).

The 1996 Appropriations Act Item 322 D(4) required the Department of Medical Assistance Services (DMAS) to expand its State Plan (the Plan) coverage of community mental health and mental retardation services. Since these new services are provided by Community Services Boards (CSBs), this entails mental health, mental retardation, and substance abuse services. This action represents an expansion of the original community mental health/mental retardation initiative which began in 1990.

In addition, the 1996 Appropriations Act Item 333 (E) requires the participation of CSBs in Medicaid covered services by

stipulating that a CSB's failure to do so will result in the termination of a like amount of state grant support.

As part of this process the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) convened a Medicaid Expansion Committee, consisting of representatives of CSBs, major consumer and family groups, and DMHMRSAS staff for the purpose of developing these expanded services. Also, staff from the two agencies (DMAS and DMHMRSAS) have worked directly together extensively to identify and develop potential services for the expanded coverage mandated by Item 322.

This advisory committee has met six times since last spring to review the identification and definition of possible covered services, draft emergency regulations, and review rates for the expanded services. The committee will continue meeting as the new services are implemented to review interpretive guidelines, utilization review criteria, and permanent regulations.

The DMHMRSAS surveyed the CSBs in April and June regarding potential services, service amounts and related costs that could be included in this expanded coverage. Recently, DMHMRSAS surveyed the CSBs to solicit comments and feedback on the proposed rates for this expansion. A description of the expansion services follows:

A. Mental Health Therapeutic Behavior Services for Children are individualized interventions provided by a trained staff person to maintain or improve the home and community functioning of a child with serious emotional disturbance (SED).

B. Mental Health Intensive Community Treatment (ICT) provides an array of mental health services to an individual with serious mental illness who needs intensive levels of support and service in the person's natural environment to permit or enhance functioning in the community. ICT has been designed to be provided through a designated multi-disciplinary team of mental health professionals.

C. Mental Health Crisis Stabilization Services for Adults provides direct mental health care to individuals experiencing acute crisis of a psychiatric nature that may jeopardize their current community living situation.

D. Mental Health Support Services provide training and supports to enable adults with serious mental illness to achieve and maintain community stability and independence in the most appropriate, least restrictive environment.

E. Mental Retardation Crisis Stabilization Community Services provide direct interventions to persons with mental retardation who are experiencing serious psychiatric or behavioral problems that jeopardize their current community living situations by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out-of-home placement.

F. Mental Retardation Supported Living and Habilitation Services provide training and supports to enable adults with mental retardation and functional limitations to be maintained in independent or semi-independent living arrangements in the community.

G. Substance Abuse Residential Treatment Services for Pregnant Women provide intensive intervention services in residential facilities, other than inpatient facilities, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

H. Substance Abuse Day Treatment Services for Pregnant Women provide intensive intervention services in a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women with serious substance abuse for the purposes of improving pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug-free lifestyle.

I. Substance Abuse Residential Treatment Services for Parents with Dependent Children are intensive intervention services provided in residential facilities, other than acute inpatient hospitals, to adults with serious substance abuse, who have custody of dependent children or who may regain custody of children if their chemical dependence or addiction is resolved, for the purposes of treating the substance abuse disorder, strengthening the parental relationship, and achieving and maintaining community stability in the most appropriate, least restrictive environment.

J. Substance Abuse Day Treatment Services for Parents with Dependent Children are intensive intervention services provided in a central location for two or more consecutive hours per day, scheduled multiple times per week, to adults with serious substance abuse for the purposes of treating the substance abuse disorder, strengthening the parent-child relationship, and achieving and maintaining community stability in the most appropriate, least restrictive environment.

These proposed expanded services will enable eligible Medicaid recipients to receive a broader array of community services that will assist them to remain in their communities and thereby avoid costly institutional admissions and treatment. Systemically, the expanded services will complement and fill out the continuum of care available in the community for Medicaid recipients with mental illnesses, mental retardation, or substance abuse disorders. The advantages to the public in the coverage of these services is the reduction in the number of General Fund dollars needed to provide these services through the use of Federal Financial Participation. Any CSB which is presently providing any of these services is doing so with all General Fund and local dollars.

7. **AUTHORITY TO ACT:** The Code of Virginia (1950) as amended, § 32.1-324, grants to the Director of the Department of Medical Assistance Services (DMAS) the authority to administer and amend the Plan for Medical Assistance in lieu of Board action pursuant to the Board's requirement. The Code also provides, in the Administrative Process Act (APA) § 9-6.14:4.1(C)(5), for an agency's adoption of emergency regulations subject to the Governor's prior approval. Subsequent to the emergency adoption action and filing with the Registrar of Regulations, this agency

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intends to initiate the public notice and comment process contained in Article 2 of the APA.

Without an emergency regulation, these amendments to the State Plan and this state-only regulation cannot become effective until the publication and concurrent comment and review period requirements of the APA's Article 2 are met. Therefore an emergency regulation is needed to meet the January 22, 1997, effective date. To be able to expend the funds appropriated by the 1996 General Assembly for this expansion, DMAS must amend the State Plan in this Fiscal Year.

8. **NEED FOR EMERGENCY ACTION:** The Code § 9-6.14:4.1(C)(5) provides for regulations which an agency finds are necessitated by an emergency situation. To enable the Director, in lieu of the Board of Medical Assistance Services, to comply with the direction of the General Assembly as reflected in the funding levels discussed below, he must adopt this emergency regulation. This issue qualifies as an emergency regulation as provided for in § 9-6.14:4.1(C)(5)(ii), because the Appropriation Act requires this regulation be effective within 280 days from the enactment of the laws or regulation. As such, this regulation may be adopted without public comment with the prior approval of the Governor. Since this emergency regulation will be effective for no more than 12 months and the Director wishes to continue regulating the subject entities, the Department is initiating the Administrative Process Act Article 2 procedures.

9. **FISCAL/BUDGETARY IMPACT:** There are no localities which are uniquely affected by these regulations as they apply statewide.

These regulations will affect the 40 Community Services Boards, which will provide the services, and Medicaid recipients who meet the eligibility criteria for these new services. The fiscal impact of these expanded services that was tentatively projected during consideration of the 1996 Appropriation Act was \$4.8 million in FY 1997 and \$9.6 million in FY 1998. It is important to note that this expansion requires no additional General Funds. The state match for the Federal Financial Participation (FFP) associated with these services will be supplied by the DMHMRSAS, as is currently the case with the existing Community Mental Health/Mental Retardation services. The payment rates proposed to be effective on January 22, 1997, will be subject to retroactive review and adjustment based on information submitted by DMHMRSAS. The following table presents a very preliminary projection of the potential annual impact of these proposed expanded services. It is based on extrapolations of data from the CSB survey conducted last June. Some of the service definitions and units have changed since then so this presentation should be considered more descriptive than predictive:

ANNUALIZED PROJECTED IMPACT OF EXPANDED MEDICAID COMMUNITY MH/MR/SAS SERVICES

Proposed Service	Projected Annual	
	Recipients	Costs
MH Therapeutic Behavior Services	181	\$520,836
MH Intensive Community Treatment	148	\$3,106,570
MH Crisis Stabilization	682	\$648,508

MH Support Services	1,502	\$1,142,489
MR Crisis Stabilization	359	\$2,280,155
MR Supported Living and Habilitation	112	\$404,593
SA Residential Treatment		
for Pregnant Women	25	\$426,517
SA Day Treatment for Pregnant Women	99	\$226,308
SA Residential Treatment		
for Parents with Children	31	\$382,917
SA Day Treatment		
for Parents with Children	199	\$539,768
TOTAL	3,338	\$9,678,661

10. **RECOMMENDATION:** Recommend approval of this request to adopt this emergency regulation to become effective once adopted and filed with the Registrar of Regulations on January 22, 1997. From its effective date, this regulation is to remain in force for one full year or until superseded by final regulations promulgated through the APA. Without an effective emergency regulation, the Department would lack the authority to pay local Community Services Boards for these additional services during the current fiscal year in conformance with the intent of the General Assembly.

11. **APPROVAL SOUGHT FOR VR 460-03-3.1100, 460-02-3.1300, 460-04-8.1500.** Approval of the Governor is sought for an emergency modification of the Medicaid State Plan in accordance with the Code of Virginia § 9-6.14:4.1(C)(5) to adopt the following regulation:

12 VAC 30-50-220.

13. Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.

13a. Diagnostic services.

A. Not provided.

13b. Screening services.

A. Screening mammograms for the female recipient population aged 35 and over shall be covered, consistent with the guidelines published by the American Cancer Society.

12 VAC 30-50-223.

13c. Preventive services.

A. Maternity length of stay and early discharge.

1. If the mother and newborn, or the newborn alone, is discharged earlier than 48 hours after the day of delivery, DMAS will cover one early discharge follow-up visit as recommended by the physicians in accordance with and as indicated by the "Guidelines for Perinatal Care" as developed by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists (1992, as amended). The mother and newborn, or the newborn alone, if the mother has not been discharged, must meet the criteria for early discharge to be eligible for the early discharge follow-up visit. This early discharge follow-up visit does not affect or apply to any usual postpartum or well-baby care or any other covered care to which the mother or newborn is entitled; it is tied

directly to an early discharge. The criteria for an early discharge are as follows:

a. Discharge criteria for early discharge of mother:

- i. Uncomplicated vaginal, full term delivery following a normal antepartum course;
- ii. Postpartum observation has sufficiently documented a stable course, including the following observations:
 - (a) Vital signs are stable;
 - (b) Uterine fundus is firm, bleeding (lochia) is controlled, of normal amount and color;
 - (c) Hemoglobin is greater than 8, hematocrit is greater than or equal to 24 and estimated blood loss is not greater than 500 cc. or blood loss does not result in the patient being symptomatic for anemia, i.e. lightheadedness, syncope, tachycardia, or shortness of breath;
 - (d) Episiotomy/repai red laceration is not inflamed, and there is no evidence of infection or hematoma;
 - (e) Tolerating prescribed diet post delivery;
 - (f) Voiding without difficulty and passing flatus. Bowel sounds present; and
 - (g) If not previously obtained, ABO and Rh typing must be done and if indicated, the appropriate amount of Rho(D) immunoglobulin must be administered.

b. Discharge criteria for early discharge of infant. The newborn must be deemed normal by physical examination and stable meeting the following criteria:

- i. Term delivery and weight is considered normal;
- ii. Infant is able to maintain a stable body temperature under normal conditions;
- iii. Infant is able to take and tolerate feedings by mouth and demonstrates normal sucking and swallowing reflexes;
- iv. Laboratory data must be reviewed to include:
 - (a) Maternal testing for syphilis and hepatitis B surface antigen;
 - (b) Cord or infant blood type and direct Coombs test if the mother is Rho(D) negative, or is type O, or if screening has not been performed for maternal antibodies;
 - (c) Hemoglobin or hematocrit and blood glucose determinations, as clinically indicated; and
 - (d) Any screening tests required by law; and
- v. Initial hepatitis B vaccine must have been administered.

c. Discharge criteria for early discharge of mother and infant:

i. Family members or other support persons must be available to the mother for the first few days following discharge;

ii. The mother or caretaker has demonstrated the ability to care for her infant, including feeding bathing, cord care, diapering, body temperature assessment and measurement with a thermometer;

iii. The mother or caretaker has been taught basic assessment skills, including neonatal well-being and recognition of illness. She verbalizes understanding of possible complications and has been instructed to notify the appropriate practitioner as necessary; and

iv. A physician-directed source of continuing medical care for both mother and baby must be identified and arrangements made for the baby to be examined within 48 hours of discharge.

2. The early discharge follow-up visit must be provided as directed by a physician. The physician may coordinate with the provider of their choice to provide the early discharge follow-up visit, within the following limitations. Qualified providers are those hospitals, physicians, nurse midwives, nurse practitioners, federally qualified health clinics, rural health clinics, and health departments clinics that are enrolled as Medicaid providers and are qualified by the appropriate state authority for delivery of the service. The staff providing the follow-up visit, at a minimum, must be a registered nurse having training and experience in maternal and child health. The visit must be provided within 48 hours of discharge.

3. The visit must include, at a minimum, the following:

a. Maternal assessment must include, but is not limited to:

- i. Vital Signs;
- ii. Assessment of lochia, height and firmness of the uterus;
- iii. Assessment of the episiotomy, if applicable;
- iv. Assessment for/of hemorrhoids;
- v. Assessment of bowel and bladder function;
- vi. Assessment of the breasts, especially the nipples if the mother is breast feeding. Assessment of the mother's understanding of breast/nipple care and understanding of proper care;
- vii. Assessment of eating habits for nutritional balance, stressing good nutrition especially in the breast feeding mother;
- viii. Assessment for signs and symptoms of anemia and, if present, notification of the responsible physician for further instructions;
- ix. Confirmation that the mother has an appointment for a six-week postpartum check-up; and

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x. Identification of the need for and make referrals to the appropriate resources for identified medical, social, and nutritional concerns and needs.

b. Newborn assessment must include, but is not limited to:

i. Vital signs;

ii. Weight;

iii. Examination of the umbilical cord and circumcision, if applicable;

iv. Assessment of hydration status;

v. Evaluation of acceptance and tolerance of feedings, including the frequency of feeds and the amount taken each feed. If possible, observation of the mother or caretaker feeding the infant for technique assessment;

vi. Assessment of bowel and bladder function;

vii. Assessment of skin coloration; if the infant demonstrates any degree of jaundice, notification of the physician for further instruction. If infant is pale, mottled, lethargic, or with poor muscle tone, immediate notification of the physician for further instruction;

viii. Assessment of infant behavior, sleep/wake patterns;

ix. Assessment of the quality of mother/infant interaction, bonding;

x. Blood samples for lab work, or a urine sample as directed by state law, physician, or clinical judgment;

xi. Confirmation that the infant has an appointment for routine two-week check up;

xii. Discussion with the mother or caretaker planning for health maintenance, including preventive care, periodic evaluations, immunizations, signs and symptoms of physical change requiring immediate attention and emergency services available; and

xiii. Identification of the need for and make referrals to any other existing appropriate resources for identified medical, social and nutritional concerns and needs.

12 VAC 30-50-225.

13. *Other diagnostic, screening, preventive, and rehabilitative services, i.e., other than those provided elsewhere in this plan.*

13d. Rehabilitative services.

A. Intensive physical rehabilitation:

1. Medicaid covers intensive inpatient rehabilitation services as defined in §A.4 in facilities certified as rehabilitation hospitals or rehabilitation hospitals which have been certified by the Department of Health to meet

the requirements to be excluded from the Medicare Prospective Payment System.

2. Medicaid covers intensive outpatient physical rehabilitation services as defined in §A.4 in facilities which are certified as Comprehensive Outpatient Rehabilitation Facilities (CORFs).

3. These facilities are excluded from the 21 day limit otherwise applicable to inpatient hospital services. Cost reimbursement principles are defined in Attachment 4.19-A.

4. An intensive physical rehabilitation program provides intensive skilled rehabilitation nursing, physical therapy, occupational therapy, and, if needed, speech therapy, cognitive rehabilitation, prosthetic-orthotic services, psychology, social work, and therapeutic recreation. The nursing staff must support the other disciplines in carrying out the activities of daily living, utilizing correctly the training received in therapy and furnishing other needed nursing services. The day-to-day activities must be carried out under the continuing direct supervision of a physician with special training or experience in the field of rehabilitation.

5. Nothing in this regulation is intended to preclude DMAS from negotiating individual contracts with in-state intensive physical rehabilitation facilities for those individuals with special intensive rehabilitation needs.

12 VAC 30-50-226.

B. Community Mental Health/Mental Retardation/Substance Abuse Treatment Services.

Definitions. The following words and terms, when used in these regulations, shall have the following meanings unless the context clearly indicates otherwise *and shall apply to Virginia Administrative Code §§ 12 VAC 30-50-226, 12 VAC 30-50-227, and 12 VAC 30-50-228:*

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with the Code of Virginia Chapter 10, Title 32.1, § 32.1-323 et seq.

"DMHMRSAS" means Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with the Code of Virginia Chapter 1, Title 37, § 37.1-39 et seq.

"Individual" means the patient, client, or recipient of services set out herein.

"Individual service plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, estimated timetable for achieving the goals and objectives or estimated length of individual's need for services. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

1. Mental health services. The following services, with their definitions, shall be covered:

a. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life (e.g., counseling to assist parents to understand and practice proper child nutrition, child health care, personal hygiene, and financial management, etc.), parenting (e.g., counseling to assist parents to understand and practice proper nurturing and discipline and behavior management, etc.), and communication skills (e.g., counseling to assist parents to understand and practice appropriate problem-solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks.

b. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem-solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.), and individual, group and family counseling.

c. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment.

d. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, and/or education within a supportive and normalizing program structure and environment.

e. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual and/or the family unit, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, pre-admission screenings, telephone contacts, and other client-related activities for the prevention of institutionalization.

f. Therapeutic behavioral services for children shall provide individualized therapeutic interventions by trained staff in order to maintain or improve the home and community functioning of a child who demonstrates serious emotional disturbance (SED) as defined by DMHMRSAS. Services must be designed to be provided in multiple settings, including home and community settings. Therapeutic behavioral services may only be provided to an individual who is also receiving intensive in-home services for children or adolescents except that therapeutic behavioral services may be provided for a period not to exceed 90 days, immediately following the child's discharge from intensive in-home services. This service cannot be billed as a component of intensive in-home services but must be billed separately. Therapeutic behavioral services may initially be approved for a 90-day period based on an assessment or evaluation which indicates the clinical need for these services. This assessment must be conducted no more than 30 days prior to initiation of services by either a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or a registered nurse certified in psychiatric and mental health nursing. Continuation of service beyond the initial 90-days may be authorized in 90-day intervals based on a face-to-face re-assessment or re-evaluation with the child and family. This re-assessment must be completed by either a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker or a registered nurse certified in psychiatric and mental health nursing, and must document the continued clinical need and frequency for these services. A unit of service shall equal one hour with a maximum of 8 hours per day. Therapeutic behavioral services for children may include, but shall not be limited to, training in or reinforcement of functional skills and appropriate behaviors of daily activities; assistance with and monitoring of medication management; crisis prevention, management or stabilization; intermittent supervision to ensure child's health or safety; in-home respite services; or role

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modeling of effective problem solving and conflict resolution.

g. Intensive community treatment for adults (ICT), initially covered for a maximum of 26 weeks based on an initial assessment with continuation reauthorized at 26 week intervals based on written assessment and certification of need by a QMHP, shall be defined as the provision of an array of mental health services to an adult individual in that individual's environment through a designated team of mental health professionals. ICT shall be provided to those individuals with serious mental illness who are in need of intensive levels of support and service in their natural environment to permit or enhance functioning in the community. Such individuals have a symptomatology or behavior difficult to treat in the clinic-based mental health service system or are unwilling to adapt to the existing mental health clinic service system. Their "natural environment" may include, but shall not necessarily be limited to, homeless shelters and other homeless service centers, churches and other community centers, homes and workplaces. Services shall begin at an intensive level and decline in intensity as the individual is stabilized. The minimum level of needed service required for initiation of this service is five hours per week. The ICT program shall provide, but not necessarily be limited to, the following services, as is appropriate for each recipient: case management; symptom assessment, management and supportive counseling; medication prescription, administration, and monitoring; crisis assessment and intervention; development of individualized community and support from family members and others; psychiatric treatment and assessment; training and assistance in daily living skills; training and assistance in finding and maintaining housing; and provision of support to the recipient's family and significant others in order to establish and maintain communication and interaction.

h. Crisis stabilization services for adults shall provide direct mental health care to individuals experiencing an acute psychiatric crisis which may jeopardize their current community living situation. Authorization may be for up to a 15 day period per crisis episode following a documented face-to-face assessment by a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or a certified psychiatric registered nurse. The maximum limit on this service is up to eight hours (with a unit being one hour) per day up to 60 days annually. The goals of crisis stabilization programs shall be to avert hospitalization or re-hospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in psychiatric crisis, and mobilize the resources of the community support system and family members and others for on-going maintenance and rehabilitation. The services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement. The crisis stabilization

program shall provide to recipients, as appropriate: psychiatric assessment and stabilization; medication management; treatment planning; symptom and behavior management; individual and group counseling; and personal health care and assistance. This service may be provided in any of the following settings, but shall not be limited to: (i) the home of a recipient who lives with family or other primary caregiver; (ii) the home of a recipient who lives independently; or (iii) community-based programs licensed by DMHMRSAS to provide residential services.

i. Mental health support services for adults shall be defined as training and supports to enable individuals with serious mental illness, which may include individuals who live with parents or other family members, to achieve and maintain community stability and independence in the most appropriate, least restrictive environment. This program shall provide the following services in order to be reimbursed by Medicaid: training in or reinforcement of functional skills and appropriate behavior related to the individual's health and safety, activities of daily living, and use of community resources; assistance with medication management and monitoring health, nutrition, and physical condition; assistance with personal care, activities of daily living, and use of community resources; and transportation of the individual necessary to implement the individual's ISP related to training in functional skills.

12 VAC 30-50-227.

2. Mental retardation (MR) services/Related Conditions. ~~Day health and rehabilitation services shall be covered for persons with MR or related conditions and the following definitions shall apply:~~ The following services with their definitions shall be covered:

a. Day health and rehabilitation services for persons with MR or related conditions (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client around implementation of the plan of care may be included as part of the services provided by the day health and rehabilitation program. The provider must be licensed by DMHMRSAS as a Day Support Program or be contracted with DRS as a habilitation service provider if offered to persons with related conditions. Specific components of day health and rehabilitation services include the following as needed:

- a.(1) Self care and hygiene skills;
- b.(2) Eating and toilet training skills;

e.(3) Task learning skills;

d.(4) Community resource utilization skills (e.g., training in time, telephone, basic computation, money, warning sign recognition, and personal identification, etc.);

e.(5) Environmental and behavior skills (e.g., training in punctuality, self-discipline, care of personal belongings and respect for property, and in wearing proper clothing for the weather, etc.);

f.(6) Medication management;

g.(7) Travel and related training to and from the training sites and service and support activities;

h.(8) Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning.

b. *MR crisis stabilization community services.* This service shall provide direct intervention to persons with MR who are experiencing serious psychiatric or behavioral problems, which jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional admission or prevent other out of home placement. This service must stabilize the recipient and strengthen the current living situation with family or other primary care givers so the recipient can be maintained during and beyond the crisis period. In order to be reimbursed by Medicaid, the following activities and services shall be provided by the crisis stabilization program to recipients, as appropriate: psychiatric and psychological assessments and stabilization; medication management and behavior assessment and behavior management; intensive care coordination with other agencies and providers to assist planning and delivery of services and supports to maintain community placement of the recipient; training of family members and other care givers and service providers in positive behavioral supports to maintain the recipient in the community; and temporary specialized supervision to ensure the safety of the recipient and others. The unit for each component of the service (crisis stabilization and specialized supervision) shall equal an hour. This service may be authorized for provision during a maximum period of 15 days and during no more than 60 days in a calendar year. The actual service units per episode shall be based on the documented clinical needs of the individuals being served.

c. *MR supported living and habilitation services.* This service shall be defined as training and supports to enable high risk individuals with MR and functional limitations to be maintained in independent or semi-independent living arrangements in the community. This may include individuals who live with parents or other family members. The maximum amount of services covered for a recipient shall be set by the Community Services Board based on documented needs of the recipient but shall not exceed 62 units per

month with one unit being defined as 1-2.99 hours per day. No more than three units shall be covered in a 24 hour period. This service shall provide the following to eligible individuals as appropriate in order to be reimbursed by Medicaid for these services: (1) training in or reinforcement of functional skills and appropriate behavior related to a recipient's health and safety, activities of daily living, and use of community resources; (2) assistance with medication management and monitoring health, nutrition and physical condition; (3) assistance with personal care, activities of daily living, and use of community resources; and (4) transportation of the recipient necessary to implement the plan of care related to training in functional skills. Routine transportation of the recipient, that is not reflected in the recipient's plan of care, shall not be a component of this service.

12 VAC 30-50-228.

3. Substance abuse (SA) treatment services for pregnant women and parents with dependent children.

a. *Substance abuse residential treatment services for pregnant women.* This service shall provide intensive intervention services in residential facilities, other than inpatient facilities, and shall be provided to pregnant and postpartum women (up to 60 days postpartum) with serious substance abuse problems, for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the infant, and achieving and maintaining a sober and drug free lifestyle. This service shall be covered as a component of expanded pre-natal care services as specified in Attachment 3.1A&B, Supplement 3. The daily rate is inclusive of all services as well as room and board which are provided to the adult and child or children in the program. A unit of service shall be one day. The maximum number of units to be covered for one adult in her lifetime is 330 days of continuous service, not to exceed 60 days postpartum. These services must be reauthorized every 90 days and after any absence which was not first authorized by the program director. The following shall be provided:

(1) Substance abuse habilitation and rehabilitation; counseling and treatment shall be provided to the participant women to include, but not necessarily be limited to, education about the impact of alcohol and other drugs on the fetus and on the maternal relationship; smoking cessation classes (if needed); relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens to monitor behavior and provide information for counseling.

(2) Training about pregnancy and fetal development shall be provided at a level and in a manner comprehensible by the participating women to include, but not necessarily be limited to, the impact of alcohol and other drugs on fetal development; normal physical changes associated with

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pregnancy; personal nutrition; delivery expectations; infant nutrition, infant development and behavior; and other information to assist the pregnant woman with the development of appropriate skills, knowledge, attitudes, and expectations regarding her maternal role.

(3) Initial and ongoing assessments specifically for substance abuse; psychiatric and psychological assessments.

(4) Training in child development for women whose children accompany them to treatment in the residence. Such training shall include, but not necessarily be limited to, nutritional needs, health issues, age appropriate discipline methods, and other development issues of early childhood such as toilet training and sleep needs of young children.

(5) Training in decision-making, anger management and conflict resolution; training in successful community living, such as selecting appropriate sober and drug free housing, budgeting, shopping.

(6) Personal health care training and assistance, to include testing, counseling and management of HIV that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.128 Hepatitis B, and other sexually transmitted diseases; testing and management for tuberculosis that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.127; and training about normal gynecological functions; and training in the management of co-existing mental illness and the appropriate medication management.

(7) Case coordination with providers of primary medical care, including obstetrical/gynecological for the participant mother, as well as pediatric services for the infant and other children in custody of the participant mother.

(8) Extensive discharge planning, in collaboration with the pregnant woman, any appropriate significant others for the pregnant woman, as well as representatives of appropriate service agencies.

b. Substance abuse day treatment services for pregnant women. This service shall provide intensive intervention services at a central location lasting two or more consecutive hours per day, which may be scheduled multiple times per week, to pregnant and postpartum women (up to 60 days postpartum) with serious substance abuse for the purposes of improving the pregnancy outcome, treating the substance abuse disorder, strengthening the maternal relationship with existing children and the new infant, and achieving and maintaining a sober and drug free lifestyle. This service shall be covered as a component of expanded pre-natal care services as specified in Attachment 3.1 A&B, Supplement 3. One unit of service shall equal two but no more than 3.99 hours on a given day. Two units of service shall equal at least four but no more than seven hours on a given

day. Three units of service shall equal seven or more hours on a given day. The lifetime limit, to be used during the sole course of treatment, on this service shall be 440 units in a twelve month period. These types of programs shall provide the following types of services or activities in order to be eligible to receive Medicaid reimbursement:

(1) Substance abuse habilitation and rehabilitation, counseling and treatment, to include education about the impact of alcohol and other drugs on the fetus and on the maternal relationship, smoking cessation classes (if needed), relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens to monitor behavior and provide information for counseling.

(2) Training about pregnancy and fetal development shall be provided at a level and in a manner comprehensible by the participating women to include, but not necessarily be limited to, the impact of alcohol and other drugs on fetal development; normal physical changes associated with pregnancy; personal nutrition; delivery expectations; infant nutrition, infant development and behavior; and other information to assist the pregnant woman with the development of appropriate skills, knowledge, attitudes, and expectations regarding her maternal role.

(3) Initial and ongoing assessments, specifically for substance abuse, to include psychiatric and psychological components.

(4) Assessment and service coordination to address the needs of the existing children in the program and linkage to existing programs, especially Part H (when appropriate), EPSDT, public school programs, and relevant mental health services for children at risk of serious emotional disturbance; and psychological assessments of children in custody of the mother who participate with her in treatment.

(5) Case coordination with providers of primary medical care, including obstetrical, gynecological, and pediatric services for the newborn and children in custody of the mother.

(6) Symptom and behavior management for co-existing mental illness, including medication management, and ongoing psychological treatment.

(7) Personal health care training and assistance, to include testing, counseling and management of HIV that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended and 45 CFR §96.128; Hepatitis B, and other sexually transmitted diseases; testing and management for tuberculosis that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.127; and training about normal gynecological functions.

(8) Training in decision-making, anger management and conflict resolution; training in successful community living, such as selecting appropriate sober and drug free housing, budgeting, and shopping.

(9) Discharge planning, in collaboration with the mother, any sober or drug free significant others, and representatives of relevant social, health and educational services agencies.

c. Substance abuse residential treatment services for parents with dependent children. This service shall provide intensive intervention services in residential facilities other than acute inpatient hospitals. Such services shall be provided to adults with serious substance abuse who have custody of dependent children or who may regain custody of children if their chemical dependence or their addiction is resolved. Such services shall be provided, in the most appropriate, least restrictive environment, for the purposes of treating the substance abuse disorder, strengthening the parental relationship, and achieving and maintaining community stability. A unit of service shall be defined as one day. The lifetime maximum allowable number of units to be provided to one adult shall be 365 days. The daily rate of reimbursement shall include all services delivered to parents and their children in the program. Such programs shall provide, at a minimum, in order to receive Medicaid reimbursement:

(1) Substance abuse habilitation and rehabilitation, counseling and treatment, to include education about the impact of alcohol and other drugs on the individual, family and on the parental relationship, smoking cessation classes (if needed), relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens to monitor behavior and provide information for counseling.

(2) Training about the parental roles to include nutritional needs, health issues, age appropriate discipline methods, and other development issues of early childhood such as toilet training and sleep needs of young children.

(3) Assessment and service coordination to address the needs of the children in the program and linkage to existing programs, especially Part H, EPSDT, public school programs, and relevant mental health services for children at risk of serious emotional disturbance; and psychological assessments of children in custody of the parent who may reside in the treatment setting with the mother.

(4) Initial and ongoing assessments, specifically for substance abuse; and psychiatric and psychological assessments.

(5) Personal health care training and assistance, to include testing, counseling and management of HIV that are identical to those required by 42 U.S.C.

§300x-21 through §300x-35, as amended, and 45 CFR §96.128: Hepatitis B, and other sexually transmitted diseases; testing and management for tuberculosis that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.127; and training about normal gynecological functions, as appropriate for female parents; training in the management of co-existing mental illness and the appropriate medication management.

(6) Case coordination with providers of primary medical care, including internal medicine, family practice, gynecological and pediatric services for children in custody of the parent.

(7) Symptom and behavior management for co-existing mental illness or illnesses, including medication management, and ongoing psychological treatment; personal health care training and assistance, to include testing, counseling and management of HIV that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.128; Hepatitis B, and other sexually transmitted diseases; testing and management for tuberculosis that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.127; and training about normal gynecological functions.

(8) Training in decision-making, anger management and conflict resolution; training in successful community living, such as selecting appropriate sober and drug free housing, budgeting, and shopping.

(9) Extensive discharge planning, in collaboration with the parent, any sober or drug free significant others, and representatives of relevant social, health and educational services agencies.

d. SA day treatment services for parents with dependent children. This service shall provide intensive intervention services to adults with serious substance abuse problems. These services shall be provided at a central location for two or more consecutive hours per day, scheduled multiple times per week. The purpose of such services shall be to treat, in the most appropriate, least restrictive environment, the substance abuse disorder, strengthen the parent-child relationship, and achieve and maintain community stability. One unit of service shall equal two but no more than 3.99 hours on a given day. Two units of service shall equal at least four but no more than seven hours on a given day. Three units of service shall equal seven or more hours on a given day. The lifetime limit, to be used during the sole course of treatment, on this service shall be 440 units in a twelve month period. The unit rate is inclusive of services provided to the adult and all children in the program. Such programs shall provide, at a minimum, in order to receive Medicaid reimbursement:

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(1) Substance abuse habilitation and rehabilitation, counseling and treatment, to include education about the impact of alcohol and other drugs on the individual, the family, and on the parental relationship, smoking cessation classes (if needed), relapse prevention to recognize personal and environmental cues which may trigger a return to the use of alcohol or other drugs; and the integration of urine toxicology screens to monitor behavior and provide information for counseling.

(2) Training about the parental roles to include nutritional needs, health issues, age appropriate discipline methods, and other developmental issues of early childhood such as toilet training and sleep needs of young children.

(3) Assessment and service coordination to address the needs of the children in the program and linkage to existing programs, especially Part H, EPSDT, public school programs, and relevant mental health services for children at risk of serious emotional disturbance; psychological assessments of children who may reside in the treatment setting with the parent who are in custody of the parent.

(4) Initial and ongoing assessments specifically for substance abuse; psychiatric, and psychological assessments.

(5) Case coordination with providers of primary medical care, including but not necessarily limited to internal medicine, family practice, gynecological, and pediatric services for children in custody of the parent.

(6) Symptom and behavior management for co-existing mental illness which may exist, including medication management and ongoing psychological treatment.

(7) Personal health care training and assistance, to include testing, counseling, and management of HIV that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.128; Hepatitis B, and other sexually transmitted diseases; testing and management for tuberculosis that are identical to those required by 42 U.S.C. §300x-21 through §300x-35, as amended, and 45 CFR §96.127; and training about normal gynecological functions, as appropriate for female parents.

(8) Training in decision-making, anger management, and conflict resolution; Training in successful community living, such as selecting appropriate sober and drug free housing, budgeting, and shopping; and

(9) Extensive discharge planning, in collaboration with the parent, any sober or drug free significant others, and representatives of relevant social, health, and educational services agencies.

12 VAC 30-50-229.

C. *Lead screenings.* Coverage shall be provided for investigations by local health departments to determine the source of lead contamination in the home as part of the management and treatment of Medicaid-eligible children who have been diagnosed with elevated blood lead levels. Only costs that are eligible for federal funding participation in accordance with current federal regulations shall be covered. Payments for environmental investigations under this section shall be limited to no more than two visits per residence.

12 VAC 30-50-510. Requirements and limits applicable to specific services: expanded prenatal care services (reference 12 VAC 30-50-10 and 12 VAC 30-50-50).

Provision of coverage and reimbursement of additional prenatal care services:

A. *Comparability of Services:* Services are not comparable in amount, duration and scope. Authority of § 9501(b) of COBRA 1985 allows an exception to provide service to pregnant women without regard to the requirements of § 1902(a)(10)(B).

B. *Definition of Services:* Expanded prenatal care services will offer a more comprehensive prenatal care services package to improve pregnancy outcome. The expanded prenatal care services provider may perform the following services:

1. *Patient Education.* Includes 6 classes of education for pregnant women in a planned, organized teaching environment including but not limited to topics such as body changes, danger signals, substance abuse, labor and delivery information, and courses such as planned parenthood, Lamaze, smoking cessation, and child rearing. Instruction must be rendered by Medicaid certified providers who have appropriate education, license, or certification.

2. *Homemaker.* Includes those services necessary to maintain household routine for pregnant women, primarily in third trimester, who need bed rest. Services include, but are not limited to, light housekeeping, child care, laundry, shopping, and meal preparation. Must be rendered by Medicaid certified providers.

3. *Nutrition.* Includes nutritional assessment of dietary habits, and nutritional counseling and counseling follow-up. All pregnant women are expected to receive basic nutrition information from their medical care providers or the WIC Program. Must be provided by a Registered Dietitian (R.D.) or a person with a master's degree in nutrition, maternal and child health, or clinical dietetics with experience in public health, maternal and child nutrition, or clinical dietetics.

4. *Blood Glucose Meters.* Effective on and after July 1, 1993, blood glucose test products shall be provided when they are determined by the physician to be medically necessary for pregnant women suffering from a condition of diabetes which is likely to negatively affect their pregnancy outcomes. The women authorized to receive a blood glucose meter must also be referred for nutritional counseling. Such products shall be provided

by Medicaid enrolled durable medical equipment providers.

5. *Residential SA Treatment for Pregnant Women Includes comprehensive, intensive residential treatment for the pregnant and postpartum woman, the infant, and other dependent children in her custody to improve pregnancy outcomes by eliminating the substance abuse problem. Must be provided consistent with standards and limits in Attachment 3.1 A&B, Supplement 1 and Attachment 3.1-C.*

6. *Day SA Treatment for Pregnant Women Includes comprehensive, intensive, day treatment for the pregnant and postpartum woman, the infant, and other dependent children in her custody to improve pregnancy outcomes by eliminating the substance abuse problem. Must be provided consistent with the standards and limits in Attachment 3.1 A&B, Supplement 1 and Attachment 3.1-C.*

C. **Qualified Providers:** (1) Any duly enrolled provider which the Department determines to be qualified who has signed an agreement may provide expanded prenatal care services. The qualified providers will provide prenatal care services regardless of their capacity to provide any other services under the Plan; (2) *Providers of substance abuse treatment services must only be licensed and approved by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS). Substance abuse services providers shall be required to meet the standards and criteria established by DMHMRSAS.*

12 VAC 30-60-140.

§10.0 Community mental health services.

A. Utilization review general requirements.

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

B. The DMHMRSAS review shall include the following items:

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

12 VAC 30-60-141 through 12 VAC 30-60-142 Reserved.

12 VAC 30-60-143.

C. Mental health services utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

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

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

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

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

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

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

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

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

h. The billing unit for intensive in-home service is one hour. Although the pattern of service delivery may vary, in-home services is an intensive service provided to individuals for whom there is a plan of care in effect which demonstrates the need for a minimum of five hours a week of intensive in-home service, and includes a plan for service provision of a minimum of five hours of service delivery per client/family per week in the initial phase of treatment. It is expected that the pattern of service provision may show more intensive services and more frequent contact with the client and family initially with a lessening or tapering off of intensity toward the latter weeks of service. Intensive in-home services below the 5 hour a week minimum may be covered. However, variations in this pattern must be consistent with the individual service plan.

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Service plans must incorporate a discharge plan which identifies transition from intensive in-home to less intensive and/or non-home based services.

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

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

2. Therapeutic day treatment for children and adolescents.

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

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

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

(a) this programming during the school day; or

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

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

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

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

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

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

d. The program must operate a minimum of two hours per day and may offer flexible program hours (i.e., before and/or after school and/or during the summer). One unit of service is defined as a minimum of two hours but less than three hours in a given day. Two units of service are defined as a minimum of three but less than five hours in a given day; and three units of service equals five or more hours of service. Transportation time to and from the program site may be included as part of the 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.

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

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

3. Day treatment/partial hospitalization services shall be provided to adults with serious mental illness following diagnostic assessment when authorized by the physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse, and in accordance with an ISP which must be fully completed within 30 days of service initiation.

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

b. The program must operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be defined as at least four but less than seven hours in a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the 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.

c. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state and/ or when other less intensive services may achieve stabilization. Admission and services longer

than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

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

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

b. Provider of psychosocial rehabilitation must be licensed by DMHMRSAS.

c. The program must operate a minimum of two continuous hours in a 24-hour period. One unit of service is defined as a minimum of two but less than four hours on a given day. Two units are defined as at least four but 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.

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.

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

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

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

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

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

short-term counseling goals by the fourth face-to-face contact.

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

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

6. Case management.

a. Reimbursement shall be provided only for "active" case management clients, as defined. An active client for case management shall mean an individual for whom there is a plan of care in effect which requires regular direct or client-related contacts or activity or communication with the client or families, 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.

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

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

d. The ISP must document the need for case management and be fully completed within 30 days of initiation of the service, and the case manager must 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.

e. The ISP must be updated at least annually.

7. Therapeutic behavioral services for children.

a. Services shall be provided consistent with the child's Individual Service Plan, as defined in Supplement 1 to Attachment 3.1 A & B.

b. Therapeutic behavioral services must be documented through a minimum of weekly progress notes and a daily log of activities and services provided and the time involved in the delivery of services to the child.

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c. Progress notes and daily logs must document that services are needed and provided in multiple settings, such as home and community settings.

8. Intensive community treatment (ICT) for adults.

a. An assessment which documents eligibility and need for this service shall be completed prior to the initiation of services. This assessment must be maintained in the individual's records.

b. A comprehensive psychosocial evaluation shall be begun at the time of admission and must be completed within 30 days of the initiation of services to the individual.

c. A service plan must be initiated at the time of admission and must be fully developed within 30 days of the initiation of services.

d. The initial service plan and all subsequent plans must demonstrate that many various services are needed by the individual.

e. An ICT team must have at least three face-to-face contacts with each client per week in his or her home or community based setting for the first 60 days of the initiation of services or reauthorization for services. There must be at least two face-to-face contacts per week for each client for the remainder of the authorization period.

f. Services are expected to begin at an intensive level and decline in intensity as the individual is stabilized. The minimum level of needed service required for initiation of this service is five hours per week.

g. An ICT team must be available and provide services 24 hours per day, seven days per week, 365 days per year, either directly or on call.

h. Services must be provided by an ICT team which maintains a staff to client ratio not to exceed 1:12 with no more than 150 clients per team.

i. An ICT team must provide a psychiatrist full or part time for at least 2.5 hours per week per 12 clients.

j. An ICT team must include a registered nurse full or part time for at least five hours per week per 12 clients.

k. An ICT team must include staff appropriately trained in case management, counseling, behavior management, substance abuse treatment, and psychosocial rehabilitation.

l. At least two-thirds of ICT team face-to-face contacts must occur in locations other than the offices of the program.

m. Any programs or services provided to clients which are strictly educational or academic in nature shall not be reimbursable. These services include educational programs such as instruction in reading, science, mathematics, GED programs, etc. However, services provided for the purpose of linking clients with

educational or academic programs shall be reimbursable.

n. Any programs or services provided to clients which are strictly vocational in nature shall not be reimbursable. However, support activities and activities directly related to assisting a client in coping with his or her mental illness to the degree necessary to develop appropriate behaviors for operating in a work environment are reimbursable.

9. Crisis stabilization services for adults.

a. This service must be authorized following a face-to-face assessment by a licensed mental health professional.

b. The assessment documents the need for service and anticipated duration of need.

c. The Individual Service Plan (ISP) is developed or revised within 24 hours of assessment or re-assessment.

d. Room and board, custodial care, and general supervision are not components of this service.

e. Clinic option services are not billable at the same time as crisis stabilization services.

10. Mental health support services for adults.

a. The individual receiving MH support services must have an active case management plan in effect which includes monitoring and assessment of the provision of MH support services. The individual responsible for the case management plan shall not be the provider of MH support services nor the immediate supervisor of the staff person providing MH support services.

b. There shall be a documented assessment/evaluation prior to the initiation of services. The assessment/evaluation must have been completed by a QMHP no more than 30 days prior to the initiation of services.

c. The ISP must be developed within 30 days of the initiation of services and must indicate the specific supports and services to be provided and the goals and objectives to be accomplished.

d. The ISP must be reviewed every three months, modified as appropriate, and must be updated and rewritten at least annually.

e. Only direct face-to-face contacts and services to individuals shall be reimbursable.

f. Any services provided to the client which are strictly academic in nature shall not be reimbursable. These include, but are not necessarily limited to, such basic educational programs as instruction in reading, science, mathematics, or GED.

g. Any services provided to clients which are strictly vocational in nature shall not be reimbursable. However, support activities and activities directly related to assisting a client to cope with a mental

illness to the degree necessary to develop appropriate behaviors for operating in an overall work environment shall be reimbursable.

h. Room and board, custodial care, and general supervision are not components of this service.

i. This service is not appropriate for individuals who reside in domiciliary care facilities and congregate living facilities where staff are expected to provide services.

12 VAC 30-60-144 Reserved.

12 VAC 30-60-145.

D. Mental retardation utilization criteria. Utilization reviews shall include determinations that providers meet all the requirements of Virginia state regulations found at VR 460-03-3.1100.

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

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

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

- (1) managing personal care needs,
- (2) understanding verbal commands and communicating needs and wants,
- (3) earning wages without intensive, frequent and ongoing supervision or support,
- (4) learning new skills without planned and consistent or specialized training and applying skills learned in a training situation to other environments,
- (5) exhibiting behavior appropriate to time, place and situation that is not threatening or harmful to the health or safety of self or others without direct supervision,
- (6) making decisions which require informed consent,
- (7) caring for other needs without the assistance or personnel trained to teach functional skills,
- (8) functioning in community and integrated environments without structured, intensive and frequent assistance, supervision or support.

c. Services for the individual must be preauthorized annually by DMHMRSAS.

d. Each individual must have a written plan of care developed by the provider which must 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.

e. The provider must update the plan of care at least annually.

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

g. The program must operate a minimum of two continuous hours in a 24-hour period. One unit of service shall be defined as a minimum of two but less than four hours on a given day. Two units of service shall be at least four but less than seven hours on a given day. Three units of service shall be defined as seven or more hours in a given day. Transportation time to and from the program site may be included as part of the 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.

h. The provider must be licensed by DMHMRSAS.

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

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

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

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

(1) The plan of care shall be reviewed by the case manager every three months to ensure the identified needs are met and the required services are provided. The review will be due by the last day of the third month following the month in which the last review was completed. A grace period will be given up to the last day of the fourth month following the month of the prior review. When the review was completed in a grace period, the next subsequent review shall be scheduled three months from the month the review was due and not the date of the actual review.

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

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- d. The individual's record must contain adequate documentation concerning progress or lack thereof in meeting the consumer service plan goals.
3. *MR crisis stabilization community services.* Appropriate use of crisis stabilization requires that the following conditions must be met:
- Service must be authorized following a documented face-to-face assessment conducted by a qualified mental retardation professional. If appropriate, the assessment will be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.
 - Extension of service must be authorized following a documented face-to-face reassessment conducted by a qualified mental retardation professional. If appropriate, the reassessment will be conducted jointly with a licensed mental health professional or other appropriate professional or professionals.
 - Need for service or extension of service must be clearly documented.
 - An Individualized Service Plan (ISP) must be developed or revised within 72 hours of assessment or reassessment.
 - Service may not be used for continuous extended periods of care beyond the service limits.
 - Room and board and general supervision shall not be considered components of this service and shall not be included in reimbursement.
4. *Mental retardation supported living and habilitation services.* Appropriate use of supported living and habilitation services entails:
- Each consumer who receives MR Supported Living and Habilitation Services must also receive SPO Mental Health or Mental Retardation Case Management services. A consumer's Case Manager may not also be the direct staff person, or the immediate supervisor of a staff person, who provides MR Supported Living and Habilitation Services to that consumer.
 - Service must be authorized by the Case Manager based upon a current functional assessment using the ICAP or other appropriate instrument(s) approved by DMHMRSAS.
 - An Individual Service Plan (ISP) must be developed which identifies specific goals and objectives to be accomplished by provision of Supported Living and Habilitation Services.
 - Supported living and habilitation services received by the consumer must be recorded with adequate documentation which addresses plan of care goals; there must be quarterly documentation of status/progress and significant events.
- e. The ISP must be reviewed at least quarterly and modified as appropriate. The ISP must be updated at least annually.
- The consumer's eligibility and need for the continuation of services must be reviewed and reauthorized by the case manager every six months.
 - This service is not appropriate for individuals who require extensive or pervasive supports or continuous supervision.
 - This service may not be provided to any consumer who receives Residential Support or Personal Assistance Services under the MR Community Waiver or who receives Personal Care under the Elderly and Disabled Waiver.
 - This service is not available to individuals who reside in a congregate residential program setting where a comparable level of care is provided.
 - Room and board and general supervision are not components of this service.
 - This service may not be used solely to provide routine or emergency respite for parents or other care givers a consumer lives with.

12 VAC 30-60-146 Reserved.

12 VAC 30-60-147.

E. Substance abuse services utilization review criteria: Utilization reviews shall include determination that providers meet all the requirements of Virginia state regulations found at 12 VAC 30-130-540 through 12 VAC 30-130-590.

1. Residential substance abuse treatment services for pregnant women. The following sections provide for required services which must be provided to adult and dependent children, if any, participants, linkages to other programs tailored to specific adult and children participant needs, and program staff qualifications.

(a) Service criteria. The following services must be rendered to program participants and documented in their case files in order for this residential service to be reimbursed by Medicaid.

(1) Ongoing (for the duration of time women participate in such programs) assessment for substance abuse.

(2) Psychological and pediatric assessments, as appropriate, for all children who accompany the pregnant woman into the residential setting.

(3) Referral to and coordination with the appropriate EPSDT services and public schools, particularly the Part H coordinators, as appropriate, for assessment of psychological problems or delays in attaining critical milestones in functional areas such as motor development, cognitive development, speech, or other essential functional skills, and collaboration in the provision of appropriate services to eligible children in the program. Referral to appropriate

mental health programs for children at risk of serious emotional disturbance for evaluation and treatment.

(b) *Services and linkages to other programs.* The following services and linkages shall be provided and documented in either the family record or the program documentation.

(1) Nonmedical clinical supervision must be provided to staff at least weekly by a professional licensed by the Department of Health Professions as either a counselor, social worker, registered nurse, psychologist, physician, or a certified clinical supervisor as defined by the Substance Abuse Certification Alliance of Virginia.

(2) The program must have an established, formal linkage with at least one obstetrician/gynecologist and one pediatrician, both of whom must be licensed by the Virginia Department of Health Professions as medical doctors.

(3) The program must also have a documented agreement with a high-risk pregnancy unit and a neonatal intensive care unit of a tertiary care hospital to provide 24 hour access to services for the women and children, and ongoing training and consultation to the staff of the program.

(4) Services must be provided in a smoke-free environment.

(5) Residential facility capacity shall be limited to 16 adults. Dependent children shall not be included in the 16 bed capacity count.

(6) The minimum ratio of clinical staff to adult clients should assure that sufficient numbers of staff are available to adequately address the needs of the adults and children in the program.

(7) Services must be authorized following face-to-face evaluation/ diagnostic assessment conducted by a licensed health professional certified by the American Society of Addiction Medicine, or certified Substance Abuse Counselor or a Certified Addictions Counselor. Services must be reauthorized every 90 days by one of the same professionals, based on documented assessment using Adult Continued Service Criteria for Clinically-Managed Medium-Intensity Residential Treatment or Clinically-Managed Medium/High-Intensity Residential Treatment as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, as amended, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the same professionals if the patient is absent for any length of time from the program without staff permission.

(8) Documented assessment regarding the client's need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

(9) The Individual Service Plan (ISP) is developed within one week of admission and when appropriate, obstetric, psychiatric, and pediatric assessments completed and documented within a two week period. Psychological assessments are to be complete within 30 days of admission. Development of the ISP shall involve the expectant mother, appropriate sober and drug-free significant others, and relevant health and social service professionals.

(10) The ISP is to be reviewed and updated every two weeks.

(11) Face-to-face therapeutic contact with the client which is directly related to her treatment plan is documented at least twice per week.

(12) Face-to-face behavior and health observations of the dependent children interacting with the parent and other care givers, related to the plan of care for each child, are documented on at least a weekly basis.

(13) Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning must begin within two weeks of admission. Discharge planning shall involve the individual. Discharge planning shall seek to assure a stable, sober, and drug-free environment for the woman and her children, treatment supports for the mother and ongoing developmental, health, and psychological supports for the children and shall include representatives of the relevant social, health, and educational agencies. The priority services of discharge planning are to assure a stable, sober and drug-free environment for the woman and her children, treatment supports for the mother and ongoing developmental, health, and psychological supports for the children.

(14) Reimbursement shall not be made for any other Community Mental Health/Mental Retardation/Substance Abuse services when they are rendered concurrently with this residential SA treatment for pregnant women.

(c) *Program and staff qualifications.* In order to be eligible for Medicaid reimbursement, the following minimal program and staff qualifications must be met:

(1) The organization to provide treatment services shall be licensed by DMHMRSAS to provide residential substance abuse services.

(2) In addition, the facility must provide access to the following services:

(a) Psychiatric assessments, as needed for both adults and children present in the program, which must be performed by a licensed physician.

(b) Psychological assessments, as needed for both adults and children present in the program,

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which must be performed by a licensed clinical psychologist.

(c) Medication management, as needed or least quarterly for adults and children in the program, which must be performed by a licensed physician, in consultation with the high-risk pregnancy unit and the neonatal intensive care unit, if appropriate.

(d) Psychological treatment, as appropriate, for both adults and children present in the program, with clinical supervision provided by a licensed clinical psychologist.

(e) Primary health care, including routine pediatric, gynecological and obstetrical care, if not already available to the adults and the children in the program through other means (e.g., Medallion or other Medicaid sponsored primary health care program).

(f) Child care programs and services which provide services appropriate to the ages of participating children and which address developmental issues and deficits; these programs must be in compliance with relevant licensure regulations of the Department of Social Services.

(g) A programmatic focus on the parent's role and responsibility as primary caretaker of her dependent children while she is in treatment in such a program.

(h) Training and assistance in locating and maintaining suitable housing and employment.

2. Substance abuse day treatment services for pregnant women.

(a) Services. The following services must be rendered to program participants and documented in their case files in order for this day treatment service to be reimbursed by Medicaid:

(1) Services must be authorized following a face-to-face evaluation/diagnostic assessment conducted by a licensed health professional certified by the American Society of Addiction Medicine, or Certified Substance Abuse Counselor or a Certified Addictions Counselor. Services must be reauthorized every 90 days by one of the same professionals based on documented assessment using Adult Continued Service Criteria for Intensive Outpatient Treatment or Partial Hospitalization as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, as amended, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the same professionals if the patient is absent from the program for more than five consecutively scheduled days of service, unless the absence is documented to be directly related to delivery.

(2) Documented assessment regarding the client's need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

(3) The Individual Service Plan (ISP) is developed within 14 days of admission; obstetrical, psychiatric and, when appropriate, pediatric assessments completed and documented within a 28 day period following admission. Psychological assessments are to be complete within 45 days of admission. Development of the ISP shall involve the expectant mother, appropriate sober and drug-free significant others, and relevant health and social service professionals.

(4) The ISP shall be reviewed and updated every four weeks.

(5) Face-to-face therapeutic contact with the client which is directly related to her treatment plan is documented at least once per week.

(6) Face-to-face behavior and health observations of the dependent children interacting with the parent and other care givers, related to the plan of care for each child, are documented on at least a weekly basis.

(b) Linkages to other services or programs.

(1) Documented discharge planning shall begin at least 60 days prior to the estimated date of delivery. If the service is initiated later than 60 days prior to the estimated date of delivery, discharge planning must begin within two weeks of admission. Discharge planning shall involve the mother, appropriate sober and drug-free significant others, representatives of the relevant social, health and educational agencies.

(2) The program must have a documented agreement with a high-risk pregnancy unit and a neonatal intensive care unit of a tertiary care hospital to provide 24 hour access to services for the women and children, and ongoing training and consultation to the staff of the program.

(3) The priority services of discharge planning shall assure a stable, sober and drug-free environment for the woman and her children, treatment supports for the mother and ongoing developmental, health, and psychological supports for the children.

(4) While participating in this SA day treatment program for pregnant women, the only concurrent mental health or substance abuse service which can be reimbursed shall be mental health emergency services.

3. Substance abuse residential treatment services for parents of dependent children.

a. Residential programs services criteria. The following services must be rendered to program participants, as appropriate, and documented in their

case files in order for this residential service to be reimbursed by Medicaid:

(1) Services must be authorized following a face-to-face evaluation/diagnostic assessment conducted by a licensed health professional certified by the American Society of Addiction Medicine, or Certified Substance Abuse Counselor or a Certified Addictions Counselor. Services must be reauthorized every 90 days by one of the same professionals, based on documented assessment using Adult Continued Service Criteria for Clinically-Managed Medium-Intensity Residential Treatment or Clinically-Managed Medium/High-Intensity Residential Treatment as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, as amended, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the same professionals if the patient is absent from the program without staff permission for more than five consecutively scheduled days of service.

(2) Documented assessment regarding the client's need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

(3) The Individual Service Plan (ISP) is developed within one week of admission and, when appropriate, psychiatric, and pediatric assessments completed and documented within two weeks. Psychological assessments are to be complete within 30 days of admission. Development of the ISP shall involve the parent, appropriate sober and drug-free significant others, and relevant health and social service professionals.

(4) The ISP is to be reviewed and updated every two weeks.

(5) Face-to-face therapeutic contact with the client is documented at least twice per week.

(6) Face-to-face behavior and health observations of the dependent children interacting with the parent and other care givers shall be documented on at least a weekly basis.

b. Linkages to other programs/services.

(1) Documented discharge planning shall begin within eight weeks of admission, and shall involve the parent, appropriate sober and drug-free significant others, representatives of the relevant social, health and educational agencies. The priorities of discharge planning are to ensure a stable, sober, and drug-free environment for the parent and the children, treatment supports for the parent and ongoing developmental, health, and psychological supports for the children.

(2) Reimbursement shall not be provided for any other Community Mental Health/Mental Retardation/Substance Abuse services when they

are rendered concurrently with this SA residential treatment service for parents of dependent children.

c. Program/staff qualifications.

(1) Facility capacity shall be limited to 16 adults and their dependent children.

(2) The minimum ratio of clinical staff to adult clients should assure that adequate staff are available to adequately address the needs of the adults and children in the program.

4. Substance abuse day treatment programs for parents of dependent children.

a. Services criteria. The following services must be rendered to program participants, as appropriate, and documented in their case files in order for this day treatment service to be reimbursed by Medicaid:

(1) Services must be authorized following a face-to-face evaluation/diagnostic assessment conducted by a licensed health professional certified by the American Society of Addiction Medicine, or Certified Substance Abuse Counselor or a Certified Addictions Counselor. Services must be reauthorized every 90 days by one of the same professionals based on documented assessment using Adult Continued Service Criteria for Intensive Outpatient Treatment or Partial Hospitalization as described in Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, as amended, published by the American Society of Addiction Medicine. In addition, services must be reauthorized by one of the same professionals if the patient is absent from the program for more than five consecutively scheduled days of service.

(2) Documented assessment regarding the client's need for the intense level of services; the assessment must have occurred within 30 days prior to admission.

(3) The Individual Service Plan (ISP) shall be developed within 14 days of admission; psychiatric and, when appropriate, pediatric assessments completed and documented within a 28 day period. Psychological assessments are to be complete within 45 days of admission. Development of the ISP shall involve the parent, appropriate sober and drug-free significant others, and relevant health and social service professionals.

(4) The ISP is to be reviewed and updated every four weeks.

(5) Face-to-face therapeutic contact with the client is documented at least once per week.

(6) Face-to-face behavior and health observations of the dependent children interacting with the parent and other care givers are documented on at least a weekly basis.

b. Linkages to other programs/services.

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(1) Documented discharge planning shall begin within eight weeks of admission, and at least four weeks prior to discharge, and shall involve the parent, appropriate sober and drug-free significant others, and representatives of the relevant social, health and educational agencies. The priority services of discharge planning are to assure a stable, sober and drug-free environment for the parent and the children, treatment supports for the parent and ongoing developmental, health, and psychological supports for the children.

(2) While participating in this SA day treatment program for parents of dependent children, the only concurrent mental health or substance abuse service which can be reimbursed shall be mental health emergency services.

c. Program/staff qualifications. The minimum ratio of clinical staff to adult clients should assure that adequate staff are available to adequately address the needs of the adults and children in the program.

12 VAC 30-60-148 through 12 VAC 30-60-149 Reserved.

PART VIII.

Community Mental Health and, Mental Retardation and Substance Abuse Services.

12 VAC 30-130-540. Definitions.

The following words and terms, when used in this part, shall have the following meanings unless the context clearly indicates otherwise:

"Board" or "BMAS" means the Board of Medical Assistance Services.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the client of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the client's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 1 (§ 37.1-39 et seq.) of Title 37 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.

"Individual Service Plan" or "ISP" means that which is defined in DMHMRSAS licensing regulations VR 470-02-09 [12 VAC 35-80-10 et seq. Repealed].

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the diagnostic classification of substantial subaverage general intellectual functioning which originates during the development period and is associated with impairment in adaptive behavior.

"Preauthorization" means the approval by the care coordinator of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Serious emotional disturbance" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in policy 1029.

"Serious mental illness" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in policy 1029.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited, to a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

12 VAC 30-130-550. Mental health services.

The following services shall be covered: intensive in-home services, therapeutic day treatment for children and adolescents, day treatment/partial hospitalization, psychosocial rehabilitation, and crisis intervention, *therapeutic behavior services for children, intensive community treatment, crisis stabilization for adults, support services*. These covered services are further defined below:

A. Intensive in-home services for children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a disorder diagnosable under the Diagnostic and Statistical Manual of Mental Disorders-III-R (DSM-III-R). These services provide crisis treatment; individual and family counseling; life, parenting, and communication skills; case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. General program requirements shall be as follows:

1. The provider of intensive in-home services shall be licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.
2. An appropriate assessment is made and documented that service needs can best be met through intensive in-home services; service shall be recommended on an Individual Service Plan (ISP).
3. Intensive in-home services shall be used when out-of-home placement is a risk, when services that are far more intensive than outpatient clinic care are required to stabilize the family situation, and when the *client's recipient's* residence as the setting for services is more likely to be successful than a clinic.
4. Intensive in-home services shall also be used to facilitate the return from an out-of-home placement when services more intensive than outpatient clinic care are required for the transition to be successful.
5. At least one parent or responsible adult with whom the child is living must be willing to participate in in-home services.
6. Since case management services are an integral and inseparable part of this service, case management services will not be reimbursed separately for periods of time when intensive in-home services are being reimbursed.

B. Therapeutic day treatment for children and adolescents shall be provided in sessions of two or more hours per day, to groups of seriously emotionally disturbed children and adolescents or children at risk of serious emotional disturbance in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation, medication education and management, opportunities to learn and use daily living skills and to enhance social and interpersonal skills, and individual, group and family counseling. General program requirements shall be as follows:

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

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

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

4. When day treatment occurs during the school day, time solely for academic instruction (i.e., when no treatment activity is going on) cannot be included in the billing unit.

C. Day treatment/partial hospitalization services for adults shall be provided in sessions of two or more consecutive hours per day, which may be scheduled multiple times per week, to groups of individuals in a nonresidential setting. These services, limited annually to 780 units, include the major diagnostic, medical, psychiatric, psychosocial and psychoeducational treatment modalities designed for individuals with serious mental disorders who require coordinated, intensive, comprehensive, and multidisciplinary treatment. General program requirements shall be as follows:

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

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

3. Individuals shall be discharged from this service when they are no longer in an acute psychiatric state or when other less intensive services may achieve stabilization.

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Admission and services longer than 90 calendar days must be authorized based upon a face-to-face evaluation by a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, or certified psychiatric nurse.

D. Psychosocial rehabilitation for adults shall be provided in sessions of two or more consecutive hours per day to groups of individuals in a nonresidential setting. These services, limited annually to 936 units, include assessment, medication education, psychoeducation, opportunities to learn and use independent living skills and to enhance social and interpersonal skills, family support, or education within a supportive and normalizing program structure and environment.

1. The provider of psychosocial rehabilitation shall be licensed by DMHMRSAS.

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

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

E. Crisis intervention shall provide immediate mental health care, available 24 hours a day, seven days per week, to assist individuals who are experiencing acute mental dysfunction requiring immediate clinical attention. This service's objectives shall be to prevent exacerbation of a condition, to prevent injury to the client recipient or others, and to provide treatment in the context of the least restrictive setting. Crisis intervention activities, limited annually to 180 hours, shall include assessing the crisis situation, providing short-term counseling designed to stabilize the individual or the family unit, providing access to further immediate assessment and follow-up, and linking the individual and family with ongoing care to prevent future crises. Crisis intervention services may include, but are not limited to, office visits, home visits, preadmission screenings, telephone contacts, and other client recipient-related activities for the prevention of institutionalization. General program requirements are as follows:

1. The provider of crisis intervention services shall be licensed by DMHMRSAS.

2. Client Recipient-related activities provided in association with a face-to-face contact shall be reimbursable.

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

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

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

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

F. Therapeutic behavioral services for children. These services shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B, Supplement 1, Narrative for the Amount, Duration, and Scope of Services (VR460-03-3.1100). All children must meet the following criteria in order for Medicaid to reimburse for therapeutic behavioral services for children:

1. *The child shall meet the DMHMRSAS definition of serious emotional disturbance (SED) as defined herein. This may include a child with mental retardation who meets the DMHMRSAS definition of SED, e.g., is extremely depressed or marginally connected with reality with impaired social functioning.*

2. *There must be written documentation that the child is unable to function in designated community settings (home, school, community-setting) because of the serious emotional disturbance.*

3. *In order to be reimbursed for these services by Medicaid, all participating programs must meet the following standards:*

a. *The program must be licensed by DMHMRSAS to provide intensive in-home services and in-home respite services when appropriate. The program description will determine when authorization by DMHMRSAS is required for in-home respite services.*

b. *Behavioral specialists must have received specialized training in providing therapeutic behavioral interventions to children with serious emotional disturbance (and mental retardation, when appropriate).*

c. *Behavioral specialists must be supervised on a routine, on-going basis by a professional in social work, psychology, human behavior, or a related*

human service field, who has a master's degree in his field or related field of practice. Supervisory staff must be available for consultation during direct service hours.

d. Documentation of the training and experience of each behavior specialist and supervisory meetings or conferences must be maintained by the provider agency.

G. Intensive community treatment for adults (ICT). These services shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B.

1. The individual shall meet all of the following criteria, as documented by the individual's record, in order to be eligible for Medicaid coverage of this service:

a. The individual must meet the criteria for serious mental illness as defined by the Board of MHMRSAS and must be experiencing extreme or prolonged functional deficits due to psychiatric symptoms. This may include individuals with serious mental illness who also have mental retardation or substance abuse problems;

b. The individual is at high risk for psychiatric hospitalization or for becoming or remaining homeless, or requires intervention by the mental health or criminal justice system due to inappropriate social behavior.

c. The individual has a history (three months or more) of a need for intensive mental health treatment or treatment for serious mental illness and chemically affected (MICA) and demonstrates a resistance to seek out and utilize appropriate treatment options; and

d. The recipient is certified by a Qualified Mental Health Professional, QMHP (as defined by DMHMRSAS) who is a part of the ICT team, as being in need of the services as defined by the Individual Service Plan.

2. The provider shall be licensed by the DMHMRSAS to provide outpatient services in order to be reimbursed for the provision of these services. These staffing standards must be met in order to qualify for a provider agreement:

a. An ICT team must be available and provide services 24 hours per day, seven days per week, 365 days per year, either directly or on call.

b. Services shall be provided by an ICT team which maintains a staff to recipient ratio not to exceed 1:12 with no more than 150 recipients per team.

c. An ICT team must include a psychiatrist provided full or part time for at least 2.5 hours per week per 12 recipients.

d. An ICT team must include a registered nurse full or part time for at least five hours per week per 12 recipients.

e. In addition to a nurse and a psychiatrist, an ICT team must include staff appropriately trained in case

management, counseling, behavior management, substance abuse treatment, and psychosocial rehabilitation.

3. ICT may be provided for a maximum of 26 weeks based on an initial assessment. Continuation of service may be reauthorized at 26 week intervals based on written assessment and certification of need by a qualified mental health professional (QMHP). This service is all inclusive, therefore, no billing for case management, clinic option services, and crisis intervention shall occur during the same time period.

H. Crisis stabilization services for adults. These services shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B, Supplement 1, Narrative for the Amount, Duration, and Scope of Services (VR460-03-3.1100). These services must be documented in the individual's records as having been provided consistent with the ISP in order to receive Medicaid reimbursement.

1. Persons qualifying for Medicaid coverage of this service shall meet the following criteria:

a. The individual must be experiencing an acute crisis of a psychiatric nature; and

b. The individual is at risk of psychiatric hospitalization.

2. This service shall not be appropriate nor reimbursed for: (i) recipients with medical conditions which require hospital care; (ii) recipients with primary diagnosis of substance abuse; (iii) recipients with psychiatric conditions which cannot be managed in the community, i.e., recipients who are of imminent danger to themselves or others.

3. MH crisis stabilization services for adults may be provided in any of the following settings, but shall not be limited to: (i) the home of a consumer who lives with family or other primary caregiver; (ii) the home of a consumer who lives independently; or (iii) community based programs licensed by DMHMRSAS to provide residential services.

4. In order to be reimbursed for this service by Medicaid, providers shall be licensed by DMHMRSAS to provide outpatient services and supportive residential services.

I. Mental health support services for adults. These services shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B, Supplement 1, Narrative for the Amount, Duration, and Scope of Services (VR460-03-3.1100).

1. Each of the following conditions must be met and be documented in the individual's record in order for Medicaid reimbursement to occur:

a. The individual meets the Board of MHMRSAS definition of serious mental illness, as defined herein, and has a history of at least one psychiatric re-hospitalization in the past five years. This may include individuals with a dual diagnosis of either mental

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illness and mental retardation, or mental illness and substance abuse disorder.

b. The individual meets at least all of the following criteria:

(i) Requires intermittent or on-going medication for management of psychiatric conditions;

(ii) Has received crisis intervention or crisis stabilization services within the previous six months; and

(iii) The individual needs supports in three or more of the following functional areas: (A) caring for his own needs related to health maintenance, personal hygiene, and activities of daily living; (B) learning new skills and applying skills in natural environments; (C) demonstrating behavior appropriate to time, place, and situation that is not threatening or harmful to the health or safety of himself or others; or (D) functioning successfully in the community and integrated environments.

(c) The individual is experiencing or is at risk of the following:

(1) Deterioration of functional skills or health status;

(2) Disruption of community living situation.

3. Provider Qualifications. *The provider agency must be licensed by DMHMRSAS as a provider of residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement MH support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.*

4. Mental Health support services for adults may be authorized for six consecutive months. Continuation of services may be authorized at six month intervals or following any break in service by a QMHP based on a documented assessment and documentation of continuing need. One unit shall equal 1-2.99 hours. The monthly limit on services shall be 31 units.

12 VAC 30-130-560. Mental retardation/related conditions services.

Day health and rehabilitation, *crisis stabilization community services, supported living and habilitation services* shall be covered for persons with mental retardation or related conditions and the following definitions shall apply:

A. Day health and rehabilitation services (limited to 780 units per year) shall provide individualized activities, supports, training, supervision, and transportation based on a written plan of care to eligible persons for two or more hours per day scheduled multiple times per week. These services are intended to improve the recipient's condition or to maintain an optimal level of functioning, as well as to ameliorate the recipient's disabilities or deficits by reducing the degree of impairment or dependency. Therapeutic consultation to service providers, family, and friends of the client recipient around implementation of the plan of care

may be included as part of the services provided by the day health and rehabilitation program. The provider shall be licensed by DMHMRSAS as a Day Support Program. Specific components of day health and rehabilitation services include the following as needed:

1. Self-care and hygiene skills: training in personal appearance and cleanliness, clothing selection/use, personal dental hygiene;

2. Eating skills: training in sitting at table, using utensils, and eating in a reasonable manner; using restaurants;

3. Toilet training skills: training in all steps of toilet process, practice of skills in a variety of public/private environments;

4. Task learning skills: training in eye/hand coordination tasks with varying levels of assistance by supervisors, developing alternative training strategies, providing training and reinforcement in appropriate community settings where such tasks occur;

5. Community resource utilization skills: training in time, telephone, basic computations, money, warning sign recognition, and personal identification such as personal address and telephone number; use of community services, resources and cultural opportunities;

6. Environmental skills: training in punctuality, self-discipline, care of personal belongings, respect for property, remaining on task and adequate attendance; training at actual sites where the skills will be performed;

7. Behavior skills: training in appropriate interaction with supervisors and other trainees, self control of disruptive behaviors, attention to program rules and coping skills, developing/enhancing social skills in relating to the general population, peer groups;

8. Medication management: awareness of importance of prescribed medications, identification of medications, the role of proper dosage and schedules, providing assistance in medication administration, and signs of adverse effects;

9. Travel and related training to and from the training sites and service and support activities;

10. Skills related to the above areas, as appropriate that will enhance or retain the recipient's functioning: training in appropriate manners, language, home care, clothing care, physical awareness and community awareness; opportunities to practice skills in community settings among the general population.

11. Transportation time to and from the program site may be included as part of the 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 apply only to transportation to and from the program site. Other program related transportation may be included in the program day as indicated by scheduled program activities.

B. *MR crisis stabilization community services. These services shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B,*

Supplement 1, Narrative for the Amount, Duration, and Scope of Services (VR460-03-3.1100). All individuals must meet the following criteria in order for Medicaid to reimburse for MR crisis stabilization community services:

1. Consumer eligibility. The following criteria must be met and must be documented in the individual's records in order for Medicaid reimbursement to occur:

a. The individual meets the Virginia Code definition of mental retardation;

b. The individual meets at least one of the following criteria: (i) is experiencing marked reduction in psychiatric, adaptive, or behavioral functioning; (ii) is experiencing an extreme increase in emotional distress; (iii) needs continuous intervention to maintain stability; or (iv) is causing harm to himself or others; and

c. The individual is at risk of at least one of the following: (1) psychiatric hospitalization; (2) emergency ICF/MR placement; (3) disruption of community status (living arrangement, day placement, or school); or (4) causing harm to himself or others.

2. MR crisis stabilization community services may be provided directly in, but not limited to, the following settings:

a. The home of a recipient who lives with family or other primary care giver or givers to augment any current services and supports;

b. The home of a recipient who lives independently or semi-independently to augment any current services and supports;

c. A community-based residential program to augment current services and supports;

d. A day program or setting to augment current services and supports; or

e. A respite care setting.

3. Provider qualifications. The following qualifications must be met in order for Medicaid reimbursement to occur for these services: the provider agency must be licensed by DMHMRSAS as a provider of outpatient services and of residential services or supportive residential services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to consumers with mental retardation who are experiencing serious psychiatric or behavioral problems.

C. MR supported living and habilitation services. These services shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B, Supplement 1, Narrative for the Amount, Duration, and Scope of Services (VR 460-03-3.1100). This service shall be defined as training and supports to enable individuals with MR and functional limitations to be maintained in independent or semi-independent living arrangements in the community.

This may include individuals who live with parents or other family members. This service shall be billed using the definition of a unit being 1-2.99 hours. No more than three units shall be covered in a 24 hour period. The maximum amount of services covered for a consumer shall be set by the Community Services Board based on documented needs of the consumer but shall not exceed 62 units per month. This service shall provide the following to eligible individuals as appropriate in order to be reimbursed by Medicaid: (1) training in or reinforcement of functional skills and appropriate behavior related to a consumer's health and safety, personal care, activities of daily living, and use of community resources; (2) assistance with medication management and monitoring health, nutrition and physical condition; (3) assistance with personal care, activities of daily living, and use of community resources; and (4) transportation of the consumer necessary to implement the plan of care related to training in functional skills. All individuals must meet the following criteria in order for Medicaid to reimburse for MR supported living and habilitation services:

1. The individual shall meet all of the following criteria, as documented in the individual's record, in order to be eligible for Medicaid coverage of this service:

a. The individual meets the Virginia Code definition of mental retardation, as defined herein;

b. The individual meets all of the following criteria:

(1) Requires intermittent or on-going medication for management of psychiatric or behavioral problems or chronic medical conditions;

(2) Has received psychiatric or behavioral intervention or crisis stabilization services within the previous six months; and

(3) The individual needs intermittent or limited supports in three or more of the following functional areas: (a) caring for his own needs related to health maintenance, personal hygiene, and activities of daily living; (b) learning new skills and applying skills in natural environments; (c) demonstrating behavior appropriate to time, place, and situation that is not threatening or harmful to the health or safety of himself or others; or (d) functioning successfully in the community and integrated environments.

c. The individual is experiencing or, without the service, is expected to experience the following: (1) deterioration of functional skills or health status; (2) disruption of community living situation.

2. Provider qualifications: The provider agency must be licensed by DMHMRSAS as a provider of residential services or supportive residential services. Individuals employed or contracted by the provider agency to implement supported living and habilitation services must have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations.

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12 VAC 30-130-565.

Substance abuse (SA) treatment services. SA residential and day treatment services for pregnant women and for parents of dependent children shall be provided consistent with the criteria and requirements of the State Plan Attachment 3.1 A&B, Supplement 1, Narrative for the Amount, Duration, and Scope of Services (VR 460-03-3.1100). The following services shall be provided within the following limits: The unit of services shall be one day with the maximum allowable number of units to be delivered to one adult in her lifetime being 330 days of continuous service, not to exceed 60 days postpartum. Services must be reauthorized every 90 days and after any absence not authorized by the program director.

A. Substance abuse (SA) residential treatment services for pregnant women. The following criteria must all be met and documented in the participant woman's record before Medicaid reimbursement for this service can occur:

1. The woman must agree to participate in developing her own treatment plan, to comply with the treatment plan, to participate, support, and implement the plan of care for her child or children, to utilize appropriate measures to negotiate changes in her treatment plan or the plan of care for her child or children, to fully participate in treatment, to comply with program rules and procedures, and to complete the treatment plan in full.
2. The recipient must be at least 18 years of age.
3. The recipient must be pregnant at admission and intend to complete the pregnancy.
4. The recipient must:
 - a. Have used alcohol or other drugs within six weeks of referral to the program; or
 - b. Be participating in less intensive treatment for substance abuse and be assessed as high-risk for relapse without more intensive intervention and treatment; or
 - c. Within 30 days, have been discharged from a more intensive level of treatment, such as hospital-based inpatient or jail- or prison-based treatment for substance abuse.
5. Documentation must be presented to demonstrate that immunizations are current for any child participant with the parent in treatment, per § 32.1-46 of the Code of Virginia, or that the child is participating in the accelerated schedule of immunizations recommended by the Virginia Department of Health.
6. The woman must be under the active care of a physician who has obstetrical privileges at a hospital licensed by the Virginia Department of Health. The woman must agree to reveal to her obstetrician her participation in substance abuse treatment, her substance abuse history, and to allow collaboration between the physician, the obstetrical and neonatal staff of the hospital in which she plans to deliver, staff

providing subsequent neonatal care to the newborn, and the program staff, as required by 42 CFR Part 2.

B. SA day treatment services for pregnant women.

1. All of the following must be met in order for Medicaid reimbursement to be available for day treatment services for pregnant women:

(a) The woman must agree to participate in developing her own treatment plan, to comply with the treatment plan, to participate, support and implement the plan of care for her child or children, to utilize appropriate measures to negotiate changes in her treatment plan or the plan of care for her child or children, to fully participate in treatment, to comply with program rules and procedures, and to complete the treatment in full.

(b) The recipient must be at least 18 years of age.

(c) The recipient must be pregnant at admission and intend to complete the pregnancy.

(d) The recipient must:

(1) Have used alcohol or other drugs within six weeks of referral to the program; or

(2) Be participating in less intensive treatment for substance abuse and assessed as high-risk for relapse without more intensive intervention and treatment; or

(3) Within 30 days, have been discharged from a more intensive level of treatment for substance abuse, such as hospital-based or jail- or prison-based inpatient treatment or residential treatment.

(e) The woman must be under the active care of a physician who has obstetrical privileges at a hospital licensed by the Virginia Department of Health. The woman must agree to reveal to her obstetrician her participation in substance abuse treatment, her substance abuse history, and to allow collaboration between the physician, the obstetrical and neonatal staff of the hospital in which she plans to deliver, staff providing subsequent neonatal care to the newborn, and the program staff, as required by 42 CFR Part 2.

(f) Documentation must be presented to demonstrate that immunizations are current for any child participating with the parent in treatment, per § 32.1-46 of the Code of Virginia, or that the child is participating in the accelerated schedule of immunizations recommended by the Virginia Department of Health.

3. Limits on services. In order to be reimbursed by Medicaid, the following limits shall apply to these programs of SA day treatment services for pregnant women:

(a) One unit of service shall equal 2-3.99 hours of service on any one day. Two units of service shall equal a minimum of 4 to 6.99 hours on any one day. Three units of service shall equal seven hours or more

on any one day. There shall be coverage of a lifetime maximum per individual of 440 units in a 12 month period inclusive of services provided to adults and children in the program.

(b) Transportation time to and from this SA day treatment services program site may be included as part of the reimbursement unit, but shall be limited to a maximum of 25% of the total daily time that each individual spends in the program billed as transportation time. This restriction applies only to transportation to and from the program site (one round trip per day billed). Other program-related transportation (for example, appointments with physicians and social services) may be included in the program day as indicated by scheduled program activities.

C. SA residential treatment services for parents with dependent children.

1. Individuals considered for this service must meet all of the following documented requirements in order for Medicaid to reimburse for this service:

(a) The parent must agree to participate in developing the treatment plan for himself and for his children, to comply with the treatment plan by participating, supporting and implementing the plan of care for his child or children, to utilize appropriate measures to negotiate changes in his treatment plan or the plan of care for his child or children, to fully participate in treatment, to comply with program rules and procedures, and to complete the treatment plan in full.

(b) The recipient must be at least 18 years of age.

(c) The recipient must have custody of a child, or be eligible to have custody returned to her or him, as documented by the appropriate local department of social services, pending successful completion of treatment.

(d) The recipient must:

(1) Have used alcohol or other drugs within six weeks of referral to the program; or

(2) Be participating in less intensive treatment for substance abuse and assessed as high-risk for relapse without more intensive intervention and treatment; or

(3) Have been discharged from a more intensive level of treatment such as hospital-based inpatient or jail- or prison-based treatment for substance abuse within 30 days.

(e) Documentation must be presented to demonstrate that immunizations are current for any child participating with the parent in treatment, as required by § 32.1-46 of the Code of Virginia, or that the child is participating in the accelerated schedule of immunizations recommended by the Virginia Department of Health.

D. SA day treatment services for parents with dependent children.

1. There shall be documentation in the individual's records that all of the following requirements have been met in order for the individual to be eligible for Medicaid reimbursement for this service:

(a) The parent must agree to participate in developing the treatment plan for himself and for his children, to comply with the treatment plan by participating, supporting, and implementing the plan of care for his child or children, to utilize appropriate measures to negotiate changes in his treatment plan or the plan of care for his child or children, to fully participate in treatment, to comply with program rules and procedures, and to complete the treatment plan in full.

(b) The individual must be at least 18 years of age;

(c) The individual must have custody of a child, or be eligible to have custody returned to him, as documented by the appropriate local department of social services, pending successful completion of treatment;

(d) The individual must have either:

(1) used alcohol or other drugs within six weeks of referral to this program, or

(2) be participating in less intensive treatment for substance abuse and be assessed as high-risk for relapse without more intensive intervention and treatment, or

(3) have been discharged from a more intensive level of treatment for substance abuse such as hospital-based inpatient or jail- or prison-based treatment or residential treatment within 30 days of admission to this program.

(e) Documentation must be presented to demonstrate that immunizations are current for any child participating with the parent in treatment, as required by § 32.1-46 of the Code of Virginia, or that the child is participating in the accelerated schedule of immunizations recommended by the Virginia Department of Health.

(f) Transportation time to and from the program site may be included as part of the reimbursement unit. Only 25% of the total daily time that each individual spends in the program can be billed as transportation time. This restriction shall apply only to transportation to and from the program site (one round trip per day billed). Other program related transportation (for example, appointments with physicians and service agencies) may be included in the program day as indicated by scheduled program activities.

12 VAC 30-130-570. Provider qualification requirements.

To qualify as a provider of services through DMAS for rehabilitative mental health or mental retardation services and substance abuse treatment services, the provider of the services must meet certain criteria. These criteria shall be:

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1. The provider shall guarantee that ~~clients~~ recipients have access to emergency services on a 24-hour basis;
2. The provider shall demonstrate the ability to serve individuals in need of comprehensive services regardless of the individual's ability to pay or eligibility for Medicaid reimbursement;
3. The provider shall have the administrative and financial management capacity to meet state and federal requirements;
4. The provider shall have the ability to document and maintain individual case records in accordance with state and federal requirements;
5. The services shall be in accordance with the Virginia Comprehensive State Plan for Mental Health, Mental Retardation and Substance Abuse Services; and
6. In addition to those requirements stated above, a provider shall meet the following requirements specific to each disability area:

a. Mental health.

- (1) Intensive in-home: licensure by DMHMRSAS as an outpatient program.
- (2) Therapeutic day treatment for children/adolescents: licensure by DMHMRSAS as a day support program.
- (3) Day treatment/partial hospitalization: licensure by DMHMRSAS as a day support program.
- (4) Psychosocial rehabilitation: licensure by DMHMRSAS as a day support program.
- (5) Crisis intervention: licensure by DMHMRSAS as an Outpatient Program
- (6) Case Management: certified by DMHMRSAS
- (7) *Therapeutic behavioral services for children: All of the following must be met:*
 - (a) *The program must be licensed by DMHMRSAS to provide outpatient services, Intensive In-Home Services and In-Home respite services when appropriate. The program description will determine when authorization is required for In-Home respite services;*
 - (b) *Behavioral specialists must have received specialized training in providing therapeutic behavioral interventions to children with serious emotional disturbance (and mental retardation, when appropriate);*
 - (c) *Behavioral specialists must be supervised on a routine, on-going basis by a professional in social work, psychology, human behavior, or a related human service field, who has a master's degree in his field or related field of practice. Supervisory staff must be available for consultation during direct service hours; and*

(d) *Documentation of the training and experience of each behavior specialist and supervisory meetings or conferences must be maintained by the provider agency.*

(8) *Intensive community treatment for adults. Licensure by DMHMRSAS to provide outpatient services.*

(9) *Crisis stabilization services for adults. Licensure by DMHMRSAS to provide outpatient services.*

(10) *Mental health support services for adults. The provider agency must be licensed by DMHMRSAS as a provider of Residential Services or Supportive Residential Services. Individuals employed or contracted by the provider agency to implement MH support services must have training in the characteristics of mental illness and appropriate interventions, training strategies, and support methods for persons with mental illness and functional limitations.*

b. Mental retardation.

(1) Day Health and Rehabilitation Services: licensure by DMHMRSAS as a day support program

(2) Case Management: Certified by DMHMRSAS

(3) *MR crisis stabilization community services. The provider agency must be licensed by DMHMRSAS as a provider of Outpatient Services and of Residential Services or Supportive Residential Services. The provider agency must employ or utilize qualified mental retardation professionals, licensed mental health professionals or other qualified personnel competent to provide crisis stabilization and related activities to consumers with mental retardation who are experiencing serious psychiatric/behavioral problems.*

(4) *MR supported living and habilitation services. The provider agency must be licensed by DMHMRSAS as a provider of Residential Services or Supportive Residential Services. Individuals employed or contracted by the provider agency to implement Supported Living and Habilitation Services must have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations.*

c. Related conditions. Day health and rehabilitation services: licensure by DMHMRSAS as a day support program or contracted with DRS as habilitation services providers.

d. Substance abuse treatment services.

(1) *Residential and day treatment services for pregnant women. For programs to be eligible to be reimbursed by Medicaid, they must meet all of the following standards:*

(a) *Nonmedical clinical supervision must be provided to staff at least weekly (for day*

programs) or twice a week (for residential programs) by a professional licensed by the Department of Health Professions as either a counselor, social worker, registered nurse, psychologist, physician, or a certified clinical supervisor as defined by the Substance Abuse Certification Alliance of Virginia.

(b) Medical care must be coordinated by a nurse case manager, who is qualified as one of the following professionals licensed by the Department of Health Professions:

- (i) a registered nurse with five years labor and delivery experience
- (ii) a certified nurse midwife with two years experience in labor and delivery
- (iii) an obstetrical/gynecological nurse practitioner with two years experience in labor and delivery, or
- (iv) a family practice nurse practitioner with three years experience.

(c) The nurse case manager shall be responsible for coordinating the provision of all immediate primary care, and shall establish and maintain communication and case coordination between the women and children in the program and necessary medical services; specifically, with each obstetrician providing services to the women, and with pediatricians for newborns and other children who may accompany the woman into treatment. In addition, the nurse case manager shall be responsible for establishing and maintaining communication and consultation linkages to high-risk obstetrical units and neonatal intensive care units, including regular conferences concerning the status of the women and children and recommendations for current and future medical treatment.

(d) In addition, if the following personnel are not on staff full-time, the facility must present the following documentation regarding access to services:

- (i) Psychiatric assessments, as needed, for both adults and children present in the program, performed by a licensed physician;
- (ii) Psychological assessments and treatment, as needed, for both adults and children present in the program, performed by a licensed clinical psychologist or a psychologist clinical;
- (iii) Medication management, as needed or at least quarterly, for adults and children in the program, performed by a licensed physician in consultation with the high-risk pregnancy unit and the neonatal intensive care unit, if appropriate;
- (iv) Primary health care performed by a licensed physician, including routine pediatric,

gynecological, and obstetrical care, if not already available to the adults and the children in the program through other means (e.g., Medallion or other Medicaid sponsored primary health care program);

(e) Additional program requirements.

(i) Child care programs and services which provide services appropriate to the ages of participating children, and which address developmental issues and deficits must be in compliance with relevant licensure regulations of the Department of Social Services;

(ii) A programmatic focus on the parent's role and responsibility as primary caretaker of her dependent children while she is in treatment in such a program;

(iii) Provision of training and assistance in locating and maintaining suitable employment; and

(iv) Provision of training and assistance in locating and maintaining suitable housing.

(2) SA residential and day treatment services for parents of dependent children provider qualifications. For programs to be eligible to be reimbursed by Medicaid, they must meet all of the following standards:

(a) Nonmedical clinical supervision must be provided at least twice per week (in a residential program) and weekly (in a day program) by a professional licensed by the Department of Health Professions as either a counselor, social worker, registered nurse, psychologist, physician or certified clinical supervisor as defined by the Substance Abuse Certification Alliance of Virginia;

(b) The program must have an established, formal linkage with at least one pediatrician licensed by the Virginia Department of Health Professions as a medical doctor with the pediatric specialty;

(c) Pediatric and psychological assessments and necessary services must be provided to any children who accompany the parent into the treatment setting;

(d) The service must provide linkages to local Part H Coordinators and public school systems for assessment of psychological problems or delays in attaining critical milestones in functional areas such as motor development, cognitive development, speech, or other essential functional skills, and must collaborate in the provision of appropriate services to eligible children in the program;

(e) Services must be provided in a smoke-free environment;

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(f) Medical care must be coordinated by a nurse case manager who shall be responsible for coordinating the provision of all immediate primary care, and shall establish and maintain communication and case coordination between the families in the program and necessary medical services, especially with pediatricians for children who may accompany the parent into treatment and who is qualified as one of the following professionals licensed by the Department of Health Professions as either:

(i) A registered nurse with five years family practice experience, or

(ii) A family practice nurse practitioner with three years experience.

(g) The program must provide documentation that access to the following services is available:

(i) Psychiatric assessments as needed for both adults and children present in the program, performed by a licensed physician.

(ii) Psychological assessments and treatment as needed for both adults and children present in the program, performed by a licensed clinical psychologist.

(iii) Medication management as needed or at least quarterly, for adults and children in the program, performed by a licensed physician.

(iv) Primary health care, including routine pediatric, internal medicine, family practice, gynecological and obstetrical care, if not already available to the adults and the children in the program through other means (e.g., Medallion or other Medicaid-sponsored primary health care program).

(v) Child care programs and services which provide services appropriate to the ages of participating children and which address developmental issues and deficits; these programs must be in compliance with relevant licensure regulations of the Department of Social Services.

(vi) A programmatic focus on the parent's role and responsibility as primary caretaker of the dependent children while he is in treatment in such a program shall be provided.

(vii) Training and assistance in locating and maintaining suitable housing.

(viii) Training and assistance in locating and maintaining suitable employment.

1. Eligible recipients will have free choice of the providers of case management services.

2. Eligible recipients will have free choice of the providers of other medical care under the plan.

12 VAC 30-130-590. Nonduplication of payment.

Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

VA.R. Doc. No. R97-243; Filed January 22, 1997, 10:07 a.m.

12 VAC 30-130-580. Free choice of providers.

The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

January 23, 1997

ADMINISTRATIVE LETTER 1997-2

TO: All Carriers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia

**RE: Credit Insurance Experience Exhibits
Section 38.2-3730 of the Code of Virginia**

In accordance with § 38.2-3730.B of the Code of Virginia, adjustments to the prima facie rates applicable to credit life and credit accident and sickness insurance for the triennium commencing January 1, 1998 will be established and published later this year. This letter serves as a reminder to all carriers licensed to write either or both of these coverages that the Credit Insurance Experience Exhibit for the 1996 reporting year, from which information will be obtained to properly calculate these rates, must be submitted to the Commission by April 1, 1997. All companies writing these coverages, as well as credit unemployment insurance and credit property insurance, were instructed, by letter in early December, 1996, to submit a duplicate copy of this exhibit to the Forms and Rates Section of the Bureau of Insurance. Because of the time constraints under which the rate calculation must be completed, it is imperative that the Bureau be provided with complete and accurate exhibits on or before the due date. There may not be sufficient time for the Bureau to correspond with companies providing inaccurate or late information, as has been the case in numerous instances with prior exhibit filings. The Bureau may have to rely on the information as filed, and will take appropriate action against any company providing inaccurate, incomplete or late information if it is subsequently determined that the company failed to comply with these instructions.

Attached to this administrative letter are examples of some of the problems identified with earlier exhibit filings. In some instances, information was not incorrect, but further explanation was necessary to properly evaluate the information. While these are only examples of some of the problems, and by no means all-inclusive, companies are encouraged to review the attachment to ensure that similar problems do not recur this year, and to contact the Bureau as soon as possible with any questions concerning the exhibit filings. In some cases, it may be appropriate to include a letter of explanation with the exhibit filing.

Companies are also reminded that the information included in the 1994 and 1995 credit insurance experience exhibits will also be used in the prima facie rate calculation for the upcoming triennium. It is the reporting company's responsibility to ensure that any and all corrections were made to exhibits and diskettes, and that corrected copies were provided to the Bureau's Financial Regulation Division and Forms and Rates Section as well as the NAIC, as appropriate.

Companies are strongly encouraged to contact the Bureau with any questions or requests for clarification of any of the above as soon as possible. The Bureau will make every

effort to respond promptly to all inquiries. Any questions, as well as the duplicate copy of the exhibit should be directed to:

Jacqueline K. Cunningham
Supervisor, Forms and Rates Section
Life and Health Division
Bureau of Insurance
P.O. Box 1157
Richmond, Virginia 23218
Phone: 804-371-9154
Fax: 804-371-9944

/s/ Alfred W. Gross
Commissioner of Insurance

Attachment to Administrative Letter 1997 - 2

The following are examples of problems identified in filings of the credit insurance experience exhibits for the 1994 and 1995 reporting years. Companies are directed to review the information below to ensure that similar problems do not reoccur in their 1996 credit insurance experience exhibits. Any of the following situations legitimately applicable to a 1996 exhibit should include an appropriate explanation.

- **Wrong state submitted, state not indicated, or Virginia experience not separated.** The Bureau received a number of exhibits in which a section was missing, the wrong state or year was submitted, or Virginia was not broken out of the totals.
- **Prima facie premium not listed.** The prima facie premium is needed to evaluate the rates. Each company should explicitly state the prima facie premium on the appropriate exhibit line, even if it is the same as earned premium.
- **Prima facie premiums greater than earned premiums.** While this is not a problem per se, our experience is that most companies charge the maximum rate allowed. This may be indicative of a miscalculation, especially on MOB business.
- **Earned premiums greater than prima facie premium.** For MOB business, this may be indicative of a miscalculation. Such premiums violate statutes unless the premium rates have been approved.
- **Changes in the reserves reported from the end of one reporting year to the beginning of the subsequent reporting year.** This can cause previously charged premium and claims to disappear. It can also cause claims without corresponding premium and vice versa.
- **Claim reserve errors.** These cause inaccurate incurred claims and may also indicate inadequate reserves for the product line.
- **Premium reserve errors.** These cause inaccurate premium reserve calculations.
- **Assumption reinsurance transactions.** If any business is transferred by assumption reinsurance, include a cover letter identifying the companies involved and the reserve amounts impacted by the transaction.

VA.R. Doc. No. R97-247; Filed January 28, 1997, 10:37 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER SEVENTY-ONE (97)

GOVERNOR'S COMMENTS ON PROPOSED REGULATIONS

DELEGATION OF AUTHORITY TO THE SECRETARY OF ADMINISTRATION TO DELEGATE CERTAIN AUTHORITIES RELATED TO THE DECENTRALIZATION OF CAPITAL PROJECT MANAGEMENT

Section 4-5.08 of the 1996-1998 Appropriation Act (Chapter 912) provides for a pilot project to evaluate the potential reduction in the time and cost of developing and managing nongeneral fund capital outlay projects at certain institutions of higher education. This section also provides for the delegation of most of the authorities necessary to ensure the institutions have sufficient flexibility to manage their nongeneral fund capital projects. However, some of the Governor's related authorities are already delegated by separate executive order. In order to ensure that this pilot project on the decentralization of nongeneral fund capital project management provides a meaningful evaluation of the potential for saving time and money, these authorities should be further delegated.

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to § 2.1-39.1 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby affirm and delegate the following authorities to the Secretary of Administration and hereby declare that he shall have the authority to delegate further these authorities to the participating institutions of higher education as follows:

From § 2.1-488.4.B of the Code of Virginia, approval of the removal of buildings on state property, with the advice and counsel of the Art and Architectural Review Board, and consistent with the Department of General Services' DEB Directive Number 1, the review of the Department of Historic Resources;

From § 2.1-504.2 of the Code of Virginia, approval of the acquisition of real estate; and

From § 11-55 of the Code of Virginia and § 4-4.01.h of the 1996-1998 Appropriation Act (Chapter 912), approval of construction and architectural and engineering contract change orders.

This Executive Order shall be effective upon its signing and shall remain in full force and effect until August 31, 1998, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 17th day of January 1997.

/s/ George Allen
Governor

VA.R. Doc. No. R97-244; Filed January 22, 1997, 11:23 a.m.

BOARDS OF MEDICINE AND NURSING

Title of Regulation: 18 VAC 90-40-10 et seq. Regulations Governing Prescriptive Authority for Nurse Practitioners.

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: January 22, 1997

VA.R. Doc. No. R97-246; Filed January 27, 1997, 10:40 a.m.

GENERAL NOTICES/ERRATA

Symbol Key

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

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

† Notice to the Public

The Department of Criminal Justice Services will submit, on or before February 15, 1997, an application to the Bureau of Justice Assistance, U. S. Department of Justice to obtain FY 1997 funding available through the Edward Byrne Memorial Formula Grant Program. The application requests a total of \$11,871,000 in federal funds. The department and the Criminal Justice Services Board anticipate using these funds beginning on July 1, 1997, to support local and state agency community-oriented justice projects, as well as projects in drug enforcement and prosecution; crime prevention; training and technical assistance; and other criminal justice system improvements which have previously received funding through this grant program.

The application is available for public review at the department's offices at 805 East Broad Street, Richmond, Virginia 23219. Comments from the public are welcome. Inquiries should be directed to Joe Marshall, Grants Administrator, at (804) 786-1577.

BOARD OF GAME AND INLAND FISHERIES

† Notice to the Public

The Board of Game and Inland Fisheries intends to propose changes in regulations for game, nonreptilian terrestrial and avian nongame wildlife, hunting and trapping. This is the regular biennial review for these regulations. The regulations subject to review and for which amendments may be proposed are:

- 4 VAC 15-20. Definitions And Miscellaneous: In General.
- 4 VAC 15-30. Definitions And Miscellaneous: Importation, Possession, Sale, Etc., of Animals.
- 4 VAC 15-40. Game: In General.
- 4 VAC 15-50. Game: Bear.
- 4 VAC 15-60. Game: Beaver.
- 4 VAC 15-70. Game: Bobcat.
- 4 VAC 15-80. Game: Crow.
- 4 VAC 15-90. Game: Deer.
- 4 VAC 15-100. Game: Dove.
- 4 VAC 15-110. Game: Fox.
- 4 VAC 15-120. Game: Grouse.
- 4 VAC 15-130. Game: Mink.
- 4 VAC 15-140. Game: Muskrat.
- 4 VAC 15-150. Game: Nutria.
- 4 VAC 15-160. Game: Opossum.
- 4 VAC 15-170. Game: Otter.
- 4 VAC 15-180. Game: Pheasant.
- 4 VAC 15-190. Game: Quail.
- 4 VAC 15-200. Game: Rabbits and Hares.
- 4 VAC 15-210. Game: Raccoon.

- 4 VAC 15-220. Game: Skunk.
- 4 VAC 15-230. Game: Squirrel.
- 4 VAC 15-240. Game: Turkey.
- 4 VAC 15-250. Game: Falconry.
- 4 VAC 15-260. Game: Waterfowl and Waterfowl Blinds.
- 4 VAC 15-270. Game: Firearms.
- 4 VAC 15-280. Game: Pelts and Furs.
- 4 VAC 15-290. Game: Permits.
- 4 VAC 15-300. Game: Weasel.
- 4 VAC 15-310. Game: Woodchuck.

The Board of Game and Inland Fisheries is exempted from the Administrative Process Act (§ 9-6.14:4.1 of the Code of Virginia) and Executive Order Number Thirteen (94) in promulgating wildlife management regulations, including the length of seasons, bag limits and methods of take set on the wildlife resources within the Commonwealth of Virginia. It is required by § 9-6.14:22 to publish all proposed and final regulations.

Under board procedures, regulatory actions occur over two sequential board meetings. At the March 20 - 21 meeting, Department of Game and Inland Fisheries' staff will present recommendations for regulatory amendments, and the board will solicit and hear comments from the public in a public hearing. The board then intends to propose regulations or regulation amendments. Any proposed regulatory actions (or informative summaries) will then be published in the *Virginia Register* and advertised in newspapers. Adoption of any regulations or regulation amendments as final will take place at a subsequent board meeting scheduled for early May 1997.

Under board procedures, the following opportunities for public involvement are being or will be provided:

First public hearing. A public hearing will be held, as described above, at the March 20-21, 1997 board meeting. This is the first of the two sequential meetings and the one at which, under its procedures, the board proposes regulatory actions.

Second public hearing. A public hearing will be held at the early May 1997 board meeting. The date, time, and location will be announced in a later notice. This is the second of the two meetings, and the one at which the board adopts final regulations.

Supplemental public hearings. More public hearings (or "public input meetings"), to be held between the first and the second board meetings, may be ordered at the discretion of the board. If, at the March 20 - 21 board meeting, the board orders that supplemental public hearings be held, the dates, times, and locations will be published at a later date.

Public comment period. A public comment period on any proposed regulatory actions will open at the time the board proposes such regulations at its March 20 - 21 meeting, and will run until the second board meeting in

General Notices/Errata

early May. In order to be taken into consideration, comments submitted: (i) must be in writing; (ii) must be accompanied by the name, address, and telephone number of the party offering the comments; (iii) should state the regulatory action desired; and (iv) should state the justification for the desired action. Comments submitted during the public comment period should be mailed to: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230. In order to be assured that comments are included in the board's briefing materials, the comments need to be received by the department no later than seven days prior to the second board meeting in early May.

Ongoing public comment. The department also receives and accepts comments on a continuous basis from members of the public, outside of the specified public comment period. The public comment period described above is an additional provision, to facilitate public involvement in specific proposed regulations.

General and administrative issues may be discussed by the board at the March 20 - 21 meeting. The board may hold an executive session beginning at 9 a.m. on March 20, 1997. If the board completes its entire agenda on March 20, it may not convene on March 21, the second of the scheduled two days of the meeting.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 W. Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

STATE WATER CONTROL BOARD

† Enforcement Action

Proposed Consent Special Orders

Bergey's Dairy Farm, Inc.

D. E. Bonney Company, Inc.

Messick & Wessels Laundromat, Inc.

Windsor Court Apartments

Isle of Wight County Schools, Windsor Elementary School

The State Water Control Board proposes to take enforcement actions against Bergey's Dairy Farm, Inc., (Virginia Beach), D. E. Bonney Company, Inc. (Virginia Beach), Messick & Wessels Laundromat (Onley), Windsor Court Apartments (Windsor), and Isle of Wight County Schools, Windsor Elementary School (Windsor). The enforcement actions will be Consent Special Orders that will require the facilities to come into compliance with appropriate laws and regulations. The order for Bergey's Dairy contains a civil charge of \$4,000 and the order for D. E. Bonney Company, Inc. contains a civil charge of \$1,000.

The Department of Environmental Quality will receive comments relating to the board's proposed consent special orders until March 19, 1997. Comments should be addressed to David S. Gussman, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, and should refer to the specific consent special order. The

proposed orders may be examined at the above address and copies of the orders may be obtained in person or by mail.

Enforcement Action

Proposed Consent Special Order

John B. Enders, d/b/a Shelter Harbor Marine

The State Water Control Board proposes to issue a Consent Special Order to John B. Enders, d/b/a Shelter Harbor Marine, located in Gloucester County, Virginia. The proposed order requires Mr. Enders to implement erosion and sediment controls of the dredge spoils at the Shelter Harbor Marine throughout this winter and spring, until June 30, 1997, at which time the order requires Mr. Enders to complete the county required erosion control measures. The order also requires Mr. Enders to submit an oil spill contingency plan.

The Department of Environmental Quality will receive written comments relating to the proposed Consent Special Order until March 5, 1997. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. Copies of the order may be obtained in person or by mail from the above office.

Enforcement Action

Proposed Special Orders

Kwik Klean Car Wash

Grayson-Highland Car Wash

Super Clean Car Wash

Ramey Chevrolet Car Wash

Konnarock Store Car Wash

Levisa Car Wash

Weaver's Store Car Wash

Moorefield Car Wash

Castlewood Car Wash

The State Water Control Board proposes to take an enforcement action against the above listed car wash facilities. Under the terms of the proposed Special Orders, the owners of these facilities have agreed to be bound by the terms and conditions of effluent limitations and monitoring and reporting requirements contained in individual appendices within the respective orders.

These requirements contained in the orders bring the facilities into compliance with state law and will protect water quality.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the Special Orders until March 5, 1997. Comments should be addressed to Dallas Sizemore, Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, Abingdon, Virginia 24212, and should refer to the Consent Special Order.

The proposed orders may be obtained in person or by mail from, or examined at, the Department of Environmental Quality, 355 Deadmore Street, Abingdon, Virginia 24212.

**Enforcement Action
Proposed Consent Special Order
Masonite Corporation**

The State Water Control Board proposes to issue a Consent Special Order to Masonite Corporation located in Waverly, Virginia. The proposed order requires Masonite to submit and implement an approvable plan and schedule for a new stormwater system to connect Outfall 001 to the Waverly Wastewater Treatment Plant. The order requires that connection of Outfall 001 to the Town of Waverly's Wastewater Treatment Plant be completed no later than May 15, 1998.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive written comments relating to the proposed Consent Special Order until March 5, 1997. Comments should be addressed to Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia 23060-6295. A copy of the Order may be obtained in person or by mail from the above office.

**Enforcement Action
Proposed Special Order
White Packing Company, Inc.
Wastewater Treatment**

The State Water Control Board proposed to issue a Consent Special Order to White Packing Company, Inc., (WPC) regarding the wastewater treatment at WPC's bacon packing facility located in King George County, Virginia.

The facility is subject to VPDES Permit No. VA0088200. The order provides, among other things, that WPC complete construction of the facility's wastewater treatment system, begin direct discharge of treated wastewater, and cease land application of treated wastewater by March 1, 1997. The order also requires that WPC implement a corrective action plan to remediate any soils or groundwater impacted by the facility's land application system. WPC has agreed to the issuance of the order.

On behalf of the board, the Department of Environmental Quality's Northern Virginia Regional Office will receive written comments relating to the order until March 5, 1997. Please address comments to Elizabeth Anne Crosier, Northern Virginia Regional Office, Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193. Please write or visit the Woodbridge address or call (703) 583-3886 in order to examine or to obtain a copy of the order.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: 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

**BOARD FOR ASBESTOS LICENSING AND LEAD
CERTIFICATION**

EDITOR'S NOTE: The fee schedule in 18 VAC 15-20-960 was printed in 13:10 VA.R. with incorrect amounts for the asbestos analytical laboratory license application fee, renewal fee, and late renewal fee. Also, the Evaluation of Training Courses fee schedule was inadvertently omitted from this section. The fee schedule is reprinted in its entirety with correct amounts.

Title of Regulation: 18 VAC 15-20-10 et seq. Asbestos Licensing Regulations.

Publication: 13:10 VA.R. 1084-1085 February 3, 1997.

Corrections to Final Regulation:

18 VAC 15-20-960. Fee schedule.

CATEGORY	FEE AMOUNT
Asbestos Contractors	
License Application	\$300 \$50
Renewal	\$300 \$50
Late Renewal	\$600 \$75
RFS Asbestos Contractors	
License Application	\$300 \$50
Renewal	\$300 \$50
Late Renewal	\$600 \$75
Asbestos Workers	
License Application	\$35
Renewal	\$35
Late Renewal	\$70 \$60
Asbestos Supervisor	
License Application	\$35
Renewal	\$35
Late Renewal	\$70 \$60

General Notices/Errata

Asbestos Inspector License Application	\$35
Renewal	\$35
Late Renewal	\$70 \$60
Asbestos Management Planner License Application	\$35
Renewal	\$35
Late Renewal	\$70 \$60
Asbestos Project Designer License Application	\$35
Renewal	\$35
Late Renewal	\$70 \$60
Asbestos Project Monitor License Application	\$35
Renewal	\$35
Late Renewal	\$70 \$60
Asbestos Analytical Laboratory License Application	\$75
Renewal	\$75
Late Renewal	\$150 \$100

EVALUATION OF TRAINING COURSES

Asbestos Worker Training Courses (32 hours)	\$1200
Refresher Course (8 hours)	\$ 400
Asbestos Supervisor Training Course (40 hours)	\$1600
Refresher Course (8 hours)	\$ 400
Asbestos Inspector Training Course (24 hours)	\$1200
Refresher Course (4 hours)	\$ 200
Asbestos Management Planner Training Course (16 hours)	\$ 800
Refresher Course (4 hours)	\$ 200
Asbestos Project Designer Training Course (24 hours)	\$1200
Refresher Course	\$ 400
Asbestos Project Monitor Training Course (40 hour comp.)	\$2000
Asbestos Project Monitor Training Course (16 hours)	\$ 800
Refresher Course	\$ 400
RFS Worker Basic Module	\$ 200
RFS Specialty Module	\$ 200
RFS Supervisor	\$ 200
RFS Worker Refresher	\$ 200
RFS Inspector Refresher	\$ 200
RFS Inspectors Training Course (24 hours comprehensive)	\$1200
RFS Inspectors Training Course (12 hours)	\$ 600
Dishonored check service fee	\$ 25

DEPARTMENT OF HEALTH (STATE BOARD OF)

Title of Regulation: 12 VAC 5-650-10 et seq. Rules and Regulations Governing Health Data Reporting.

Publication: 13:4 VA.R. 406-411 November 11, 1996.

Corrections to Final Regulation:

The chapter number for this regulation has been changed from "650" to "215." All section number references should be changed from "12 VAC 5-650-XX" to "12 VAC 5-215-XX."

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

BOARD FOR ACCOUNTANCY

† February 26, 1997 - 10 a.m. -- Open Meeting
Fredericksburg City Council Chambers, 715 Princess Anne Street, Fredericksburg, Virginia.

A meeting to conduct a formal administrative hearing pursuant to § 9-6.14:12 of the Code of Virginia.

Contact: Stacie G. Camden, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-2393.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Board of Agriculture and Consumer Services

February 20, 1997 - 9 a.m. -- Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor Board Room, Richmond, Virginia. ♿

A regular meeting of the board to discuss issues related to Virginia agriculture. 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 Roy Seward at least five days before the meeting date so that suitable arrangements can be made.

Contact: Roy Seward, Secretary, Board of Agriculture and Consumer Services, P.O. Box 1163, Suite 211, Richmond, VA 23218, telephone (804) 786-3535.

Virginia Cattle Industry Board

† February 20, 1997 - 10 a.m. -- Open Meeting
The Homestead, Hot Springs, Virginia.

A meeting to approve the minutes of prior board meetings, review the board's financial statements, and receive an update on cattle industry board projects. 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 Reginald Reynolds at least three days before the meeting date so that suitable arrangements can be made.

Contact: Reginald B. Reynolds, Executive Director, Virginia Cattle Industry Board, P.O. Box 176, Daleville, VA 24083, telephone (540) 992-1009 or FAX (540) 992-4632.

Virginia Dark-Fired Tobacco Board

March 20, 1997 - 10 a.m. -- Open Meeting
Sheldon's Restaurant, Highway 15 North, Routes 15 and 360 (Business), Keysville, Virginia. ♿

A meeting to consider funding proposals for research, promotion, and education projects pertaining to Virginia dark-fired tobacco, and other business that may come before the board. 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 D. Stanley Duffer at least five days before the meeting date so that suitable arrangements can be made.

Contact: D. Stanley Duffer, Secretary, Virginia Dark-Fired Tobacco Board, P.O. Box 129, Halifax, VA 24558, telephone (804) 572-4568 or FAX (804) 572-8234.

Calendar of Events

Virginia Farmers' Market Board

February 18, 1997 - 1:30 p.m. -- Open Meeting
Donaldson Brown Hotel and Conference Center, College Avenue and Otey Street, Conference Room F, Blacksburg, Virginia. ☎

The board will convene for the winter board meeting to hear reports from two shipping point farmers' markets, the Eastern Shore of Virginia Farmers' Market and the Southwest Virginia Farmers' Market. In addition, the board will hear plans from interested producer organizations concerning the proposed construction of two additional shipping point markets in the system, the Southwest Virginia Farmers' Market and the Northern Neck of Virginia Farmers' Market. The two additional markets will bring the total to four markets in the Virginia Farmers' Market System. Board members will hear and approve minutes of the last meeting and the board's financial statement. 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 Susan Simpson at least five days before the meeting date so that suitable arrangements can be made.

Contact: Susan Simpson, Special Programs Manager, Department of Agriculture and Consumer Services, 1100 Bank St., Suite 1002, Richmond, VA 23219, telephone (804) 786-2112 or FAX (804) 371-7785.

Virginia Marine Products Board

† **March 5, 1997 - 6 p.m.** -- Open Meeting
Eliza's Restaurant, Main Street, Reedville, Virginia. ☎

A meeting to receive reports from the Executive Director of the Virginia Marine Products Board on finance, marketing, past and future program results and planning, publicity/public relations, old/new business, and to approve minutes of the prior meeting. 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 Shirley Estes at least five days before the meeting date so that suitable arrangements can be made.

Contact: Shirley Estes, Executive Director, Virginia Marine Products Board, 554 Denbigh Boulevard, Suite B, Newport News, VA 23608, telephone (757) 874-3474 or FAX (757) 886-0671.

Virginia Sheep Industry Board

† **February 27, 1997 - 10 a.m.** -- Open Meeting
Days Inn, 584 Oakland Circle (Exit 205, I-81), Raphine, Virginia. ☎

A meeting to hear an update on the Project Proposal Grants for predator control. Other grant requests will be

heard in support of market development and education. A report will be heard on the failure of the national sheep referendum and how this may affect the Virginia sheep industry. 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 Mike Carpenter at least five days before the meeting date so that suitable arrangements can be made.

Contact: Mike Carpenter, Program Director, Livestock Marketing Services, 116 Reservoir Street, Harrisonburg, VA 22801, telephone (540) 434-2728.

Virginia Soybean Board

March 5, 1997 - 8 a.m. -- Open Meeting
March 6, 1997 - 8 a.m. -- Open Meeting
Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia.

The board will hear FY 1996-97 project reports and FY 1997-98 project proposals and make funding decisions. 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 Phil Hickman at least five days before the meeting date so that suitable arrangements can be made.

Contact: Philip T. Hickman, Program Director, Virginia Soybean Board, 1100 Bank St., Suite 1005, Richmond, VA 23219, telephone (804) 371-6157 or FAX (804) 371-7786.

Virginia Sweet Potato Board

March 6, 1997 - 7:30 p.m. -- Open Meeting
Eastern Shore Agricultural and Extension Center, Research Drive, Painter, Virginia. ☎

A meeting to include discussion of programs regarding promotion, research and education, the annual budget, and other business that may come before the board. 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 J. William Mapp at least five days before the meeting date so that suitable arrangements can be made.

Contact: J. William Mapp, Program Director, Virginia Sweet Potato Board, P.O. Box 26, Onley, VA 23418, telephone (757) 787-5867 or FAX (757) 787-1041.

Virginia Winegrowers Advisory Board

† **April 9, 1997 - 10 a.m.** -- Open Meeting
Department of Agriculture and Consumer Services, Washington Building, 1100 Bank Street, 2nd Floor, Board Room, Virginia. ☎

The annual meeting of the board to conduct regular board business including committee reports, and to hear budget requests from individuals seeking grants for the 97-98 funding year. The board will entertain public comment after the grant proposals have been given and before the board votes on the proposal. Any person who needs any accommodations in order to participate at the meeting should contact Mary E. Davis-Barton at least 10 days before the meeting date so that suitable arrangements can be made.

Contact: Mary E. Davis-Barton, Secretary, Virginia Winegrowers Advisory Board, Department of Agriculture and Consumer Services, 1100 Bank St., Room 1010, Richmond, VA 23219, telephone (804) 786-0481.

STATE AIR POLLUTION CONTROL BOARD

March 11, 1997 - 10 a.m. -- Public Hearing
Department of Environmental Quality, 629 East Main Street, First Floor, Training Room, Richmond, Virginia.

April 4, 1997 -- Written comments may be submitted until 4:30 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 Air Pollution Control Board intends to adopt regulations entitled: **9 VAC 5-500-10 et seq. Exclusionary General Permit for Federal Operating Permit Program.** The proposed general permit provides a legally enforceable mechanism for major sources subject to the federal operating permit program (Article 1 of 9 VAC 5 Chapter 80) to be excluded from the program provided they maintain their actual annual emissions at a level that is 75% of the major source, potential to emit applicability thresholds for the federal operating permit program. The regulation does not require any owner to apply for coverage under the general permit but provides the opportunity for an owner to apply for coverage if the stationary source meets the 75% of the threshold criteria and all other requirements of the regulation.

Request for Comments: The purpose of this notice is to provide the public with the opportunity to comment on the proposed general permit.

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

Location of Proposal: The proposal and any other supporting documents may be examined by the public at the department's Office of Air Program Development (Eighth Floor), 629 East Main Street, Richmond, Virginia, and the Department's regional offices (listed below) between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period.

Southwest Regional Office
Department of Environmental Quality
355 Deadmore Street
Abingdon, Virginia
Ph: (540) 676-4800

West Central Regional Office
Department of Environmental Quality
3019 Peters Creek Road
Roanoke, Virginia
Ph: (540) 562-6700

Lynchburg Satellite Office
Department of Environmental Quality
7705 Timbertake Road
Lynchburg, Virginia
Ph: (804) 582-5120

Valley Regional Office
Department of Environmental Quality
4411 Early Road
Harrisonburg, Virginia
Ph: (540) 574-7800

Fredericksburg Satellite Office
Department of Environmental Quality
300 Central Road, Suite B
Fredericksburg, Virginia
Ph: (540) 899-4600

Northern Regional Office
Department of Environmental Quality
13901 Crown Court
Woodbridge, Virginia
Ph: (703) 583-3800

Piedmont Regional Office
Department of Environmental Quality
4949-A Cox Road
Glen Allen, Virginia
Ph: (804) 527-5020

Tidewater Regional Office
Department of Environmental Quality
5636 Southern Boulevard
Virginia Beach, Virginia
Ph: (757) 518-2000

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

Contact: Robert A. Mann, Director, Office of Air Program Development, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4419, FAX (804) 698-4510, toll-free 1-800-592-5492, or (804) 698-4021/TDD ☎

ALCOHOLIC BEVERAGE CONTROL BOARD

February 20, 1997 - 9:30 a.m. -- Open Meeting

March 3, 1997 - 9:30 a.m. -- Open Meeting

March 17, 1997 - 9:30 a.m. -- Open Meeting

March 31, 1997 - 9:30 a.m. -- Open Meeting

Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, Virginia. ☎

A meeting to receive and discuss reports from and activities of staff members.

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.

Calendar of Events

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS AND LANDSCAPE ARCHITECTS

Board for Landscape Architects

February 27, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

Board for Land Surveyors

† **February 19, 1997 - 9 a.m.** -- Closed Meeting
† **February 21, 1997 - 9 a.m.** -- Closed Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Conference Room 3, Richmond,
Virginia. ☎

A meeting with consultants to compile the Land Surveyor A and B exams that will be administered in April 1997. This exam workshop is not open to the public due to the confidential nature of the examination.

Contact: George O. Bridewell, Examination Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8572 or (804) 367-9753/TDD ☎

February 20, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation,
3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct board business. 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: Mark N. Courtney, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8514 or (804) 367-9753/TDD ☎

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

February 20, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
5th Floor, Richmond, Virginia. ☎

A general board meeting. Public comments will be received for 15 minutes at the beginning of the meeting.

Contact: Senita Booker, Program Support Technician Senior, Board of Audiology and Speech-Language Pathology, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7390, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

CHESAPEAKE BAY LOCAL ASSISTANCE BOARD

Regulatory Committee and Regulation Advisory Committee

February 24, 1997 - 10 a.m. -- Open Meeting
March 10, 1997 - 10 a.m. -- Open Meeting
Department of Social Services, 730 East Broad Street,
Conference Room 3, Lower Level, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A joint meeting of the Chesapeake Bay Local Assistance Department's Regulatory Committee and the board's Regulation Advisory Committee, composed of stakeholders, to discuss amendments to the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.).

Contact: Scott Crafton, Regulatory Coordinator, Chesapeake Bay Local Assistance Department, 805 E. Broad St., Suite 701, Richmond, VA 23219, telephone (804) 225-3440, FAX (804) 225-3447, or toll-free 1-800-243-7229/TDD ☎

CHILD DAY-CARE COUNCIL

March 13, 1997 - 9:30 a.m. -- Open Meeting
Theater Row Building, 730 East Broad Street, Lower Level,
Conference Room 1, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council will meet to discuss issues and concerns that impact child day centers, camps, school age programs, and preschool/nursery schools. Public comment will be received at noon. Please call ahead of time for possible changes in meeting time. Contingent snow date for the February meeting is February 21, 1997, at the same time, and March 21, 1997, for the March meeting at the same time.

Contact: Rhonda Harrell, Division of Licensing Programs, Department of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1775.

COMPENSATION BOARD

February 27, 1997 - 11 a.m. -- Open Meeting
Ninth Street Office Building, 202 North Ninth Street, 9th Floor,
Room 913/913A, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A routine business meeting.

Contact: Bruce W. Haynes, Executive Secretary, P.O. Box 710, Richmond, VA 23218-0710, telephone (804) 786-0786, FAX (804) 371-0235, or (804) 786-0786/TDD ☎

DEPARTMENT OF CONSERVATION AND RECREATION

Chickahominy Scenic River Advisory Board

† March 5, 1997 - 7:30 p.m. -- Open Meeting
Hargrove Insurance Company, 10321 Washington Highway (Route 1), Glen Allen, Virginia.

A meeting to discuss river issues.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

Goose Creek Scenic River Advisory Board

† March 24, 1997 - 1:30 p.m. -- Open Meeting
County Administration Building, Lobby Level, Lovettsville Room, Leesburg, Virginia.

A meeting to discuss river issues.

Contact: Richard G. Gibbons, Environmental Program Manager, Department of Conservation and Recreation, Division of Planning and Recreation Resources, 203 Governor St., Suite 326, Richmond, VA 23219, telephone (804) 786-4132, FAX (804) 371-7899, or (804) 786-2121/TDD ☎

Rappahannock Scenic River Advisory Board

February 19, 1997 - 6 p.m. -- Open Meeting
Riverview Restaurant, 1101 Sophia Street, Fredericksburg, Virginia.

A meeting to discuss river issues.

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

Recovery Fund Committee

March 18, 1997 - 9 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to consider claims against the Virginia Contractor Transaction Recovery Fund. This meeting will be open to the public; however, a portion of the discussion may be conducted in executive session. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact Holly Erickson at least two weeks prior to the meeting so that suitable arrangements can be made. The board fully complies with the Americans with Disabilities Act.

Contact: Holly Erickson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8561.

Regulatory Review Committee

February 20, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4 A, Richmond, Virginia. ☎

A meeting to determine needed changes, additions, and revisions in procedures, requirements, and standards applicable to Class A and B licenses and Class C certificates.

Contact: Eric Olson, Assistant Administrator, Board for Contractors, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2958.

Tradesman Certification Committee

† March 4, 1997 - 10 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Conference Room 4 A-B, Richmond, Virginia. ☎

A regular quarterly meeting of the committee to consider items of interest relating to the tradesmen section of the Board for Contractors.

Contact: Steven L. Arthur, Administrator, Tradesman Certification Program, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-6166.

BOARD OF CORRECTIONS

February 19, 1997 - 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.

Calendar of Events

Administration Committee

February 19, 1997 - 8:30 a.m. -- Open Meeting
Department of Corrections, 6900 Atmore Drive, Richmond, Virginia. ☎

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

February 18, 1997 - 9:30 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.

CRIMINAL JUSTICE SERVICES BOARD

† **March 25, 1997 - 11 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

A meeting to consider matters related to the board's responsibilities for criminal justice training and improvement of the criminal justice system. Public comments will be heard before adjournment of the meeting.

Contact: Sherri Stader, Assistant to the Director, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8718 or FAX (804) 786-0588.

Committee on Training

† **March 25, 1997 - 9 a.m.** -- Open Meeting
General Assembly Building, 910 Capitol Square, House Room D, Richmond, Virginia. ☎

A meeting to discuss matters related to training for criminal justice personnel.

Contact: Sherri Stader, Assistant to the Director, Department of Criminal Justice Services, 805 E. Broad St., 10th Floor, Richmond, VA 23219, telephone (804) 786-8718 or FAX (804) 786-0588.

BOARD OF DENTISTRY

February 21, 1997 - 9 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 Informal Conference Committee to hear disciplinary cases. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

February 28, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A panel of the board will conduct formal hearings to hear disciplinary cases. This is a public meeting; however, no public comment will be taken.

Contact: Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9906 or (804) 662-7197/TDD ☎

BOARD OF EDUCATION

February 27, 1997 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting of the Board of Education and the Board of Vocational Education. The agenda is available upon request.

Contact: James E. Laws, Jr., Administrative Assistant to the Superintendent for Board Relations, Department of Education, P.O. Box 2120, Richmond, VA 23218-2120, telephone (804) 225-2540 or toll-free 1-800-292-3820.

LOCAL EMERGENCY PLANNING COMMITTEE - CITY OF ALEXANDRIA

† **March 12, 1997 - 6 p.m.** -- Open Meeting
Lee Center Training Academy, 1108 Jefferson Street, Alexandria, Virginia. ☎ (Interpreter for the deaf provided upon request)

An open meeting to conduct business in accordance with SARA Title III, Emergency Planning and Community Right-to-Know Act of 1986.

Contact: Charles McRorie, Emergency Preparedness Coordinator, 900 Second St., Alexandria, VA 22314, telephone (703) 838-3825 or (703) 838-5056/TDD ☎

LOCAL EMERGENCY PLANNING COMMITTEE - HANOVER COUNTY

† February 25, 1997 - 10 a.m. -- Open Meeting
Hanover Medical Center, 8220 Meadowbridge Road,
Conference Room, Mechanicsville, Virginia. ☎

A meeting to review the Superfund Amendment and
Reauthorization Act of 1986 (SARA Title III) and to
discuss future plans.

Contact: John J. Trivellin, CEM, Deputy Fire
Marshal/Hazardous Materials Coordinator, Hanover County
Fire Administration, P.O. Box 470, Hanover, VA 23069,
telephone (804) 798-8554 or (804) 730-6195.

VIRGINIA FIRE SERVICES BOARD

February 21, 1997 - 9 p.m. -- Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A business meeting to discuss fire training and policies.
The meeting is open to the public for comments and
input.

Contact: Bobby L. Stanley, Jr., Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Fire/EMS Education and Training Committee

February 20, 1997 - 10:30 a.m. -- Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A meeting to discuss fire training and policies. The
meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Fire Prevention and Control Committee

February 20, 1997 - 8:30 a.m. -- Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A meeting to discuss fire training and policies. The
meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Legislative/Liaison Committee

February 20, 1997 - 2 p.m. -- Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A meeting to discuss fire training and policies. The
meeting is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

Residential Sprinkler Committee

February 19, 1997 - 2 p.m. -- Open Meeting
Radisson Hotel, 555 East Canal Street, Richmond, Virginia.

A meeting to discuss residential sprinklers. The meeting
is open to the public for comments and input.

Contact: Bobby L. Stanley, Jr., Executive Director,
Department of Fire Programs, James Monroe Bldg., 101 N.
14th St., 18th Floor, Richmond, VA 23219, telephone (804)
371-0220.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

February 24, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☎

A meeting to hold informal conferences. No public
comment will be received.

Contact: Elizabeth Young Kirksey, 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

† February 25, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☎

The regular meeting of the committee. Public comments
will be received during the first 15 minutes.

Contact: Elizabeth Young Kirksey, 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

† March 10, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street,
Richmond, Virginia. ☎

The regular meeting of the committee. Public
comments will be received during the first 15 minutes.

Contact: Elizabeth Young Kirksey, 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 ☎

Calendar of Events

BOARD OF GAME AND INLAND FISHERIES

† **March 20, 1997 - 9 a.m.** -- Public Hearing
† **March 21, 1997 - 8 a.m.** -- Public Hearing
Comfort Inn, 3200 West Broad Street, Richmond, Virginia. ♿
(Interpreter for the deaf provided upon request)

The board intends to propose changes in regulations for game, nonreptilian terrestrial and avian nongame wildlife, hunting and trapping. This is the regular biennial review for these regulations. The regulations subject to review and for which amendments may be proposed are listed in the General Notices section of this publication. General and administrative issues may be discussed by the board. The board may hold an executive session beginning at 9 a.m. on March 20, 1997. If the board completes its entire agenda on March 20, it may not convene on March 21.

Contact: Phil Smith, Policy Analyst, Department of Game and Inland Fisheries, 4010 West Broad St., Richmond, VA 23230, telephone (804) 367-8341 or FAX (804) 367-2427.

DEPARTMENT OF GENERAL SERVICES

Design/Build Construction Management Review Board

February 21, 1997 - 10 a.m. -- Open Meeting
Department of General Services, 805 East Broad Street, Room 116, Richmond, Virginia. ♿

† **March 21, 1997 - 10 a.m.** -- Open Meeting
† **April 18, 1997 - 10 a.m.** -- Open Meeting
The Library of Virginia, 800 East Broad Street, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

† **May 16, 1997 - 10 a.m.** -- Open Meeting
Department of General Services, 805 East Broad Street, Room 116, Richmond, Virginia. ♿ (Interpreter for the deaf provided upon request)

A meeting of the board to continue development of guidelines/procedures and review any requests which may have been submitted. The board meets the third Friday of each month.

Contact: Nathan I. Broocke, Director, Division of Engineering and Buildings, Department of General Services, 805 E. Broad St., Room 101, Richmond, VA 23219, telephone (804) 786-3263 or (804) 786-6152/TDD ♿

GEORGE MASON UNIVERSITY

Board of Visitors

† **March 26, 1997 - 4:30 p.m.** -- Open Meeting
George Mason University, Mason Hall, Room D23, Fairfax, Virginia. ♿

A meeting to hear reports of the standing committees, and to act on those recommendations presented by the

standing committees. An agenda will be available seven days prior to the board meeting for those individuals or organizations who request it.

Contact: Ann Wingblade, Administrative Assistant, or Carole Richardson, Administrative Staff Assistant, Office of the President, George Mason University, Fairfax, VA 22030-4444, telephone (703) 993-8701 or FAX (703) 993-8707.

DEPARTMENT OF HEALTH (STATE BOARD OF)

Biosolids Use Information Committee

February 27, 1997 - 1 p.m. -- Open Meeting
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ♿

A meeting immediately following the Biosolids Use Regulations Advisory Committee to discuss specific concerns relating to the land application and agricultural use of biosolids including issues related to the final Biosolids Use Regulations.

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

February 27, 1997 - 9 a.m. -- Open Meeting
UVA Richmond Center, 7740 Shrader Road, Suite E, Richmond, Virginia. ♿

A meeting to discuss issues concerning the implementation of and proposed revisions 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.

HOPEWELL INDUSTRIAL SAFETY COUNCIL

March 4, 1997 - 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

State Building Code Technical Review Board

February 21, 1997 - 10 a.m. -- Open Meeting
The Jackson Center, 501 North 2nd Street, 1st Floor Conference Room, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to hear administrative appeals concerning building and fire codes and other regulations of the department. The board also issues interpretations and formalizes recommendations to the Board of Housing and Community Development concerning future changes to the regulations.

Contact: Vernon W. Hodge, Building Code Supervisor, State Building Code Office, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7170 or (804) 371-7089/TDD

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

† February 25, 1997 - 11 a.m. -- Open Meeting
Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, Virginia.

A regular meeting of the Board of Commissioners to (i) review and, if appropriate, approve the minutes from the prior monthly meeting; (ii) consider for approval and ratification mortgage loan commitments under its various programs; (iii) review the authority's operations for the prior month; and (iv) consider such other matters and take such other actions as it may deem appropriate. Various committees of the Board of Commissioners may also meet before or after the regular meeting and consider matters within their purview. The planned agenda of the meeting will be available at the offices of the authority one week prior to the date of the meeting.

Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 782-1986.

INNOVATIVE TECHNOLOGY AUTHORITY

† February 18, 1997 - 12:30 p.m. -- Open Meeting
Virginia Biotechnology Research Park, 800 East Leigh Street, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A meeting to conduct business and receive briefings and a report from the president and staff. Public comment will not be received.

Contact: Linda E. Gentry, Chief Financial Officer, Innovative Technology Authority, 2214 Rock Hill Road, Suite 600, Herndon, VA 20170-4200, telephone (703) 689-3035 or FAX (703) 689-3041.

DEPARTMENT OF LABOR AND INDUSTRY

February 28, 1997 -- 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 Safety and Health Codes Board intends to adopt regulations entitled: **16 VAC 25-35-10 et seq. Regulation Concerning Certified Lead Contractor Notification, Lead Project Permits and Permit Fees.** The proposed regulation requires all certified lead contractors who engage in lead abatement projects in Virginia with a contract value of \$2,000 or more to notify the Department of Labor and Industry in writing at least 20 days before the beginning of such lead project. Such notification shall be provided on a department form accompanied by the payment of a lead project permit fee. The regulation also requires filing of amended notifications prior to changes in or cancellation of lead abatement projects.

Statutory Authority: §§ 40.1-22(5) and 40.1-51.20 of the Code of Virginia.

Public comments may be submitted until February 28, 1997, to Bonnie H. Robinson, Regulatory Coordinator, Department of Labor and Industry, 13 South 13th Street, Richmond, VA 23219.

Contact: Clarence H. Wheeling, Director of Occupational Health Compliance, Department of Labor and Industry, 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0574, FAX (804) 786-8418, or (804) 786-2376/TDD

Virginia Apprenticeship Council

† March 20, 1997 - 10 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A quarterly meeting of the council.

Contact: Fred T. Yontz, Program Manager, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 371-0295, FAX (804) 786-9877 or (804) 786-2376/TDD

Migrant and Seasonal Farmworkers Board

† March 12, 1997 - 10 a.m. -- Open Meeting
State Capitol, Capitol Square, House Room 1, Richmond, Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board.

Contact: Patti C. Bell, Staff Coordinator, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 225-3083, FAX (804) 371-6524 or (804) 786-2376/TDD

Calendar of Events

COMMISSION ON LOCAL GOVERNMENT

February 17, 1997 - 10 a.m. -- Open Meeting
Smithfield High School, 14171 Turner Drive, Auditorium,
Smithfield, Virginia.

Oral presentations regarding the Town of Smithfield and Isle of Wight County Voluntary Settlement Agreement. 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, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

February 17, 1997 - 7 p.m. -- Public Hearing
Smithfield High School, 14171 Turner Drive, Auditorium,
Smithfield, Virginia.

A public hearing regarding the Town of Smithfield and Isle of Wight County Voluntary Settlement Agreement. 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, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

March 3, 1997 - 10 a.m. -- Open Meeting
Commission on Local Government, 8th Street Office Building,
805 East Broad Street, Room 702, Richmond, Virginia.

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, FAX (804) 371-7999 or (804) 786-1860/TDD ☎

STATE MANAGEMENT TEAM

† March 4, 1997 - 9:30 a.m. -- Open Meeting
The Library of Virginia, 800 East Broad Street, Conference Room, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss and recommend policy and procedure regarding the Comprehensive Services Act for At Risk Youth and Their Families to the State Executive Council. Please contact Pamela Fitzgerald Cooper or Gloria Jarrell to speak during the public forum.

Contact: Pamela Fitzgerald Cooper or Gloria N. Jarrell, Secretary, State Management Team, P.O. Box 1797, Richmond, VA 23236, telephone (804) 371-2177 or FAX (804) 371-0091.

VIRGINIA MANUFACTURED HOUSING BOARD

† February 19, 1997 - 10 a.m. -- Open Meeting
Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular monthly meeting of the board.

Contact: Curtis L. McIver, Associate Director, Department of Housing and Community Development, Manufactured Housing Office, 501 N. 2nd St., Richmond, VA 23219, telephone (804) 371-7160 or (804) 371-7089/TDD ☎

MARINE RESOURCES COMMISSION

February 25, 1997 - 9:30 a.m. -- Open Meeting
March 25, 1997 - 9:30 a.m. -- Open Meeting
Marine Resources Commission, 2600 Washington Avenue,
Newport News, Virginia. ☎ (Interpreter for the deaf provided upon request)

The commission will hear and decide marine environmental matters at 9:30 a.m.; permit applications for projects in wetlands, bottom lands, coastal primary sand dunes and beaches; appeals of local wetland board decisions; policy and regulatory issues. The commission will hear and decide fishery management items at approximately noon. Items to be heard are as follows: regulatory proposals, fishery management plans; fishery conservation issues; licensing; shellfish leasing. Meetings are open to the public. Testimony will be taken under oath from parties addressing agenda items on permits and licensing. Public comments will be taken on resource matters, regulatory issues and items scheduled for public hearing. The commission is empowered to promulgate regulations in the areas of marine environmental management and marine fishery management.

Contact: Laverne Lewis, Secretary to the Commission, Marine Resources Commission, P.O. Box 756, Newport News, VA 23607-0756, telephone (757) 247-2261, toll-free 1-800-541-4646 or (757) 247-2292/TDD ☎

MATERNAL AND CHILD HEALTH COUNCIL

School Health Subcommittee

March 18, 1997 - 10 a.m. -- Open Meeting
American Cancer Society, 4240 Park Place Court, Glen Allen, Virginia.

A meeting to focus on improving the health of the Commonwealth's children and adolescents by promoting and improving programs and service delivery systems related to school health programs.

Contact: Nancy Ford, School Health Nurse Consultant, Department of Health, Division of Child and Adolescent Health, 1500 E. Main St., Suite 137, Richmond, VA 23219, telephone (804) 786-7367.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES (BOARD OF)

February 18, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

A meeting of the board to consider policy issues relating to Medicaid.

Contact: Cynthia A. Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099 or FAX (804) 371-4981.

February 21, 1997 -- 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 consider amending regulations entitled: **12 VAC 30-70-10 et seq. Methods and Standards for Establishing Payment Rates--Inpatient Hospital Services and 12 VAC 30-80-10 et seq. Methods and Standards for Establishing Payment Rates--Other Types of Care.** The purpose of the proposed action is to promulgate a new reimbursement methodology (diagnosis related groupings) for inpatient hospital services to replace the current per diem methodology.

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

Public comments may be submitted until February 21, 1997, to Scott Crawford, Division of Financial Operations, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

February 21, 1997 -- 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 consider adopting regulations entitled: **12 VAC 30-100-250 through 12 VAC 30-100-370 et seq. HIV Premium Assistance Program.** The purpose of the proposed regulation is to promulgate permanent regulations for the administration of the HIV Premium Assistance Program consistent with § 32.1-330.1 of the Code of Virginia.

Statutory Authority: §§ 32.1-325 and 32.1-330.1 of the Code of Virginia.

Public comments may be submitted until February 21, 1997, to Michael Lupien, Division of Program Delivery Systems,

Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219.

Contact: Victoria Simmons or Roberta Jonas, Regulatory Coordinators, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 371-8854 or FAX (804) 371-4981.

March 18, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia.

A meeting to discuss medical assistance services policy and to take action on issues pertinent to the board.

Contact: Cynthia A. Klisz, Board Liaison, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-8099 or FAX (804) 371-4981.

Pharmacy Advisory Committee

February 19, 1997 - 10 a.m. -- Open Meeting
Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Board Room, Richmond, Virginia. ☒

A meeting to conduct routine business and to reach closure on the committee's recent activities.

Contact: Marianne R. Rollings, R.Ph., Pharmacy Section, Division of Client Operations, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 225-4268 or FAX (804) 786-0414.

BOARD OF MEDICINE

† February 27, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia.

A panel of the board, pursuant to §§ 54.1-2400 and 9-6.14:12 of the Code of Virginia, will inquire into allegations that a practitioner may have violated laws governing the practice of medicine. The panel 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, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7693, FAX (804) 662-9943, or (804) 662-7197/TDD ☒

March 7, 1997 -- 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 Medicine intends to amend regulations entitled: **18 VAC 85-80-10 et seq. Regulations for the Certification of Occupational Therapists.** The purpose of the proposed amendments

Calendar of Events

is to update the identification of the national accreditation body for occupational therapy, clarify the clinical supervision of uncertified persons practicing occupational therapy, and reduce the application fee for certification.

Statutory Authority: §§ 54.1-2400 and 54.1-2956.1 through 54.1-2956.5 of the Code of Virginia.

Contact: Warren W. Koontz, M.D., Executive Director, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7423 or FAX (804) 662-9943.

Informal Conference Committee

† **February 28, 1997 - 9 a.m.** -- Open Meeting
1776 Holiday Inn, 725 Bypass Road, Williamsburg, 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, Board of Medicine, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-7332, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES

Pilot Leadership Team

† **February 19, 1997 - 10:30 a.m.** -- Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☎

A meeting of the Priority Populations/Case Rate Funding Subcommittee to review the mental health, mental retardation and substance abuse draft service matrices; establish expectations for project consultants; and hear an update on other systems using the case rate model.

Contact: Cheryl Crawford, Administrative Staff Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-5682, FAX (804) 371-6638, or (804) 371-8977/TDD ☎

† **March 13, 1997 - 10:30 a.m.** -- Open Meeting
Department for the Visually Handicapped, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to continue development of plans for mental health, mental retardation and substance abuse system reform pilot projects. The team will hear reports of the

Priority Populations/Case Rate Funding subcommittee, the Consumer and Family Involvement Subcommittee, and the POMS Subcommittee.

Contact: Cheryl Crawford, Administrative Staff Specialist, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-5682, FAX (804) 371-6638, or (804) 371-8977/TDD ☎

State Human Rights Committee

† **March 7, 1997 - 9 a.m.** -- Open Meeting
Location to be announced.

A regular meeting of the committee to discuss business and conduct hearings relating to human rights issues. Agenda items are available from Kli Kinzie.

Contact: Kli Kinzie, State Human Rights Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, James Madison Bldg., 109 Governor St., Richmond, VA 23219, telephone (804) 786-3988, FAX (804) 371-2308, toll-free 1-800-451-5544 or (804) 371-8977/TDD ☎

STATE MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES BOARD

† **March 18, 1997 - Time to be announced** -- Open Meeting
† **March 19, 1997 - Time to be announced** -- Open Meeting
Martha Washington Inn, Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

A regular meeting to discuss business and promulgate policy and regulations. The agenda will include a public comment period at the beginning of the meeting on March 19. The agenda will be available one week in advance of the meeting.

Contact: Marline Butler, State Board Secretary, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, Richmond, VA 23214, telephone (804) 786-7945 or FAX (804) 371-0092.

STATE MILK COMMISSION

February 19, 1997 - 10:30 a.m. -- Open Meeting
900 Natural Resources Drive, 2nd Floor Board Room, Charlottesville, Virginia. ☎

A regular meeting to (i) discuss industry issues, distributor licensing, Virginia base transfers, Virginia baseholding license amendments, regulations, and fiscal matters and (ii) review reports from the staff of the Milk Commission. The commission may consider other matters pertaining to its responsibilities. Any persons who require accommodations in order to participate in the meeting should contact Edward C. Wilson, Jr., at least five days prior to the meeting date so that suitable arrangements can be made.

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 (804) 786-2013/TDD

DEPARTMENT OF MINES, MINERALS AND ENERGY

Coal Surface Mining Reclamation Fund Advisory Board

April 23, 1997 - 10 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 to review and discuss the current status and administration of the reclamation fund.

Contact: Danny R. Brown, Division Director, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8152, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

Division of Mined Land Reclamation

February 19, 1997 - 9:30 a.m. -- Open Meeting
United Coal Company, Grundy, Virginia. (Interpreter for the deaf provided upon request)

A meeting to review federal and state surface mining policies, procedures, regulations, and laws to identify initiatives and incentives, changes in regulations, laws, policies, and procedures needed to enhance and promote additional remaining operations in Virginia.

Contact: Norman Enix, Remining Coordinator, Department of Mines, Minerals and Energy, Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8286, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

February 20, 1997 - 1 p.m. -- Open Meeting
Department of Mines, Minerals and Energy, Buchanan-Smith Building, Route 23, Conference Room 116, Big Stone Gap, Virginia. (Interpreter for the deaf provided upon request)

A meeting to give interested persons an opportunity to be heard in regard to the FY 97 Abandoned Mine Land Consolidated Grant Application to be submitted to the Federal Office of Surface Mining.

Contact: Roger L. Williams, Abandoned Mine Land Manager, Department of Mines, Minerals and Energy, P.O. Drawer 900, Big Stone Gap, VA 24219, telephone (540) 523-8208, FAX (540) 523-8163 or toll-free 1-800-828-1120 (VA Relay Center).

VIRGINIA MUSEUM OF FINE ARTS

† March 4, 1997 - 8 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A monthly briefing of museum officers with the Director and Deputy Director. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Collections Committee

† March 18, 1997 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Auditorium, Richmond, Virginia.

A meeting to consider gifts, purchases and loans of works of art. 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 23221-2466, telephone (804) 367-0553.

Finance Committee

† March 20, 1997 - 11 a.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Conference Room, Richmond, Virginia.

A regularly scheduled meeting to review the budget. Public comment will not be received.

Contact: Emily C. Robertson, Secretary of the Museum, Virginia Museum of Fine Arts, 2800 Grove Ave., Richmond, VA 23221-2466, telephone (804) 367-0553.

Board of Trustees

† March 20, 1997 - 12:30 p.m. -- Open Meeting
Virginia Museum of Fine Arts, 2800 Grove Avenue, Richmond, Virginia.

A meeting to receive reports from committees and staff, conduct budget review, and consider for approval purchases and gifts of art works. 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 23221-2466, telephone (804) 367-0553.

BOARD OF NURSING

Special Conference Committee

† February 19, 1997 - 9 a.m. -- Open Meeting
† February 20, 1997 - 9 a.m. -- Open Meeting
† February 27, 1997 - 9 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. (Interpreter for the deaf provided upon request)

Calendar of Events

A Special Conference Committee will conduct informal conferences with licensees and certificate holders. Public comment will not be received.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

Nursing Practice Advisory Committee

† **February 26, 1997 - Noon** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to discuss the issue of delegation of nursing acts to unlicensed persons. Other issues relevant to the duties of the committee may be considered as time permits. Public comment will be received at the beginning of the meeting.

Contact: Nancy K. Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9909, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARD OF NURSING HOME ADMINISTRATORS

February 27, 1997 - 9:30 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎

The board will conduct informal conferences. No public comment will be received.

Contact: Senita Booker, Program Support Technician Senior, Board of Nursing Home Administrators, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9111, FAX (804) 662-9943 or (804) 662-7197/TDD ☎

BOARDS OF NURSING AND MEDICINE

March 21, 1997 -- 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 Boards of Nursing and Medicine intend to amend regulations entitled: **18 VAC 90-40-10 et seq. Regulations for Prescriptive Authority for Nurse Practitioners.** The amendments clarify and simplify the regulations and increase the number of nurse practitioners with prescriptive authority who may be supervised by one physician from two to four.

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

Contact: Nancy Durrett, R.N., Executive Director, Board of Nursing, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9945 or FAX (804) 662-9943.

BOARD OF PHARMACY

† **February 20, 1997 - 9 a.m.** -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

A board meeting and formal hearing. Public comment will be received at the beginning of the meeting. Public comment on any regulatory process for which the official public comment has closed will not be received.

Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9911 or FAX (804) 662-9313.

POLYGRAPH EXAMINERS ADVISORY BOARD

March 11, 1997 - 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)

An open meeting to discuss regulatory review and other matters requiring board action. In addition, the Polygraph Examiners Licensing Examination will be administered to eligible polygraph examiner interns. 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 for appropriate accommodations. The department 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 ☎

BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

† **March 19, 1997 - 10 a.m.** -- Public Hearing
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia.

† **April 18, 1997** -- 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 Professional Counselors and Marriage and Family Therapists intends to adopt regulations entitled: **18 VAC 115-50-10 et seq. Regulations Governing the Practice of Marriage and Family Therapy.** The purpose of the proposed regulation is to comply with statutory requirements to establish standards of ethics, fees and criteria for licensure of marriage and family therapists.

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Contact: Janet Delorme, Deputy Executive Director, Board of Professional Counselors and Marriage and Family Therapists, 6606 W. Broad St., 4th Floor, Richmond, VA 23230, telephone (804) 662-9575, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

BOARD FOR PROFESSIONAL AND OCCUPATIONAL REGULATION

March 17, 1997 - 10 a.m. -- Open Meeting
Department of Forestry, 900 Natural Resources Drive, Charlottesville, Virginia. ☎

A general business meeting.

Contact: Debra S. Vought, Agency Analyst, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230-4917, telephone (804) 367-8519 or (804) 367-9753/TDD ☎

BOARD OF PSYCHOLOGY

Credentials Committee

February 21, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎
(Interpreter for the deaf provided upon request)

A meeting to conduct an informal hearing regarding a practitioners academic and experience credentials. Public comment will not be heard.

Contact: M. LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

Discipline Committee

February 20, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 1, Richmond, Virginia. ☎

February 27, 1997 - 10 a.m. -- Open Meeting
Department of Health Professions, 6606 West Broad Street, 5th Floor, Conference Room 3, Richmond, Virginia. ☎

An informal hearing regarding allegations of practitioner misconduct. Public comment will not be heard.

Contact: M. LaDonna Duncan, Administrative Assistant, Department of Health Professions, 6606 W. Broad St., 4th Floor, Richmond, VA 23230-1717, telephone (804) 662-9913, FAX (804) 662-9943, or (804) 662-7197/TDD ☎

REAL ESTATE BOARD

February 20, 1997 - 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 board at least two weeks prior to the meeting. 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) 367-8552, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

† **March 10, 1997 - 8:30 a.m. -- Open Meeting**

† **March 11, 1997 - 8:30 a.m. -- Open Meeting**

† **March 12, 1997 - 8:30 a.m. -- Open Meeting**

Department of Alcoholic Beverage Control, Alexandria Regional Office, 501 Montgomery Street, Alexandria, Virginia.

A meeting to conduct informal fact-finding conferences pursuant to § 9-6.14:11 of the Code of Virginia.

Contact: Stacie G. Camden, Legal Assistant, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-2393.

Education Committee

† **February 19, 1997 - 3 p.m. -- Open Meeting**
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A meeting to conduct regulatory review. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Contact: William H. Ferguson, II, Education Administrator, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8526, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

February 20, 1997 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting of the committee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. The department fully complies with the Americans with Disabilities Act.

Calendar of Events

Contact: Karen W. O'Neal, Assistant Director, Department of Professional and Occupational Regulation, 3600 W. Broad St., Richmond, VA 23230, telephone (804) 367-8509, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

Fair Housing Subcommittee

February 20, 1997 - 8 a.m. -- Open Meeting
Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia. ☎

A general business meeting of the subcommittee. Persons desiring to participate in the meeting and requiring special accommodations or interpreter services should contact the board at least two weeks prior to the meeting. 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) 367-8509, FAX (804) 367-2475, or (804) 367-9753/TDD ☎

DEPARTMENT OF REHABILITATIVE SERVICES (BOARD OF)

† March 27, 1997 - 10 a.m. -- Open Meeting
Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, Virginia.

A quarterly business meeting of the board.

Contact: John R. Vaughn, Commissioner, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7010, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9040/TDD ☎

DEPARTMENT OF REHABILITATIVE SERVICES AND STATE REHABILITATION ADVISORY COUNCIL

† March 6, 1997 - 4 p.m. -- Public Hearing
Department of Rehabilitative Services, Central Office, Koger Center West, 8004 Franklin Farms Drive, Lee Building, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 10, 1997 - 3:30 p.m. -- Public Hearing
Higher Education Center, 397 Little Neck Road, 3300 South Building, Room 103, Virginia Beach, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 12, 1997 - 4 p.m. -- Public Hearing
Department of Rehabilitative Services, Huntington Office, 5904 Old Richmond Highway, 4th Floor, Alexandria, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 13, 1997 - 7:15 p.m. -- Public Hearing
Woodrow Wilson Rehabilitation Center, Dining Hall, Fishersville, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 18, 1997 - 1:30 p.m. -- Public Hearing
Department of Rehabilitative Services, Central Office, Koger Center West, 8004 Franklin Farms Drive, Lee Building, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 18, 1997 - 4 p.m. -- Public Hearing
Department of Rehabilitative Services, 3433 Brambleton Avenue, S.W., Roanoke, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 19, 1997 - 4 p.m. -- Public Hearing
Department of Rehabilitative Services, 468 East Main Street, Abingdon, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 20, 1997 - 3 p.m. -- Public Hearing
Department of Rehabilitative Services, 770 Piney Forest Road, Suite B, Martinsville, Virginia. ☎ (Interpreter for the deaf provided upon request)

† March 24, 1997 - 7 p.m. -- Public Hearing
Marriott Hotel, 50 Kingsmill Road, Williamsburg, Virginia. ☎ (Interpreter for the deaf provided upon request)

A public hearing to provide the public the opportunity to comment on vocational rehabilitative and supportive employment services provided by the Department of Rehabilitative Services. Public comments shall be considered in the department's policy formation and the development of the 1998 state plan. Interpreter services shall be available. Other accommodations may be requested through Gloria O'Neal. If members of the public are unable to attend the public hearing, comments may be recorded with Gloria O'Neal through April 1, 1997.

Contact: Gloria O'Neal, Program Support Technician, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23230, telephone (804) 662-7611, FAX (804) 662-7696, toll-free 1-800-552-5019/TDD and Voice or (804) 662-9950/TDD ☎

VIRGINIA RESOURCES AUTHORITY

March 11, 1997 - 9:30 a.m. -- Open Meeting
Mutual Building, 909 East Main Street, Suite 607, 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 month, 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., Executive Director, Virginia Resources Authority, P.O. Box 1300, Richmond, VA 23218, telephone (804) 644-3100 or FAX (804) 644-3109.

RICHMOND HOSPITAL AUTHORITY

Board of Commissioners

† February 27, 1996 - 5 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, 700 E. Main St., Suite 904, Richmond, VA 23219-0548, telephone (804) 782-1938.

STATE BOARD OF SOCIAL SERVICES

February 19, 1997 - 9 a.m. -- Open Meeting
February 20, 1997 - 9 a.m. (if necessary) -- Open Meeting
Department of Social Services, Central Regional Office, 1604
Santa Rosa Road, Wythe Building, Richmond, Virginia. ☎

A work session and formal business meeting of the board.

Contact: Pat Rengnerth, Administrative Specialist, State Board of Social Services, 730 E. Broad St., Richmond, VA 23219, telephone (804) 692-1900, FAX (804) 692-1949, toll-free 1-800-552-7096 or 1-800-552-3431/TDD ☎

COMMONWEALTH TRANSPORTATION BOARD

February 19, 1997 - 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.

February 20, 1997 - 10 a.m. -- Open Meeting
Department of Transportation, 1401 East Broad Street,
Richmond, 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.

TREASURY BOARD

February 20, 1997 - 9 a.m. -- Open Meeting
James Monroe Building, 101 North 14th Street, Treasury Board Room, 3rd Floor, Richmond, Virginia. ☎

In January and February 1997 the board will meet on the third Thursday rather than the third Wednesday.

Contact: Gloria J. Hatchel, Administrative Assistant, Department of the Treasury, James Monroe Bldg., 101 N. 14th St., Richmond, VA 23219, telephone (804) 371-6011.

VIRGINIA RACING COMMISSION

February 19, 1997 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia. ☎

A regular monthly meeting to include consideration of Colonial Downs' application for a satellite facility to be located in Hampton.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363.

† March 18, 1997 - 9:30 a.m. -- Open Meeting
Tyler Building, 1300 East Main Street, Richmond, Virginia. ☎

A regular meeting to include a report by Colonial Downs and a review of regulations.

Contact: William H. Anderson, Policy Analyst, Virginia Racing Commission, P.O. Box 1123, Richmond, VA 23218, telephone (804) 371-7363.

DEPARTMENT FOR THE VISUALLY HANDICAPPED (BOARD OF)

† April 12, 1997 - 10 a.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.

Calendar of Events

Contact: Katherine C. Proffitt, Executive Secretary Senior, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

† **March 12, 1997 - 6:30 p.m.** -- Open Meeting
Trinity Episcopal Church, 2217 Columbia Pike, Arlington, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **March 15, 1997 - 1 p.m.** -- Open Meeting
Tidewater Regional Transit Building, 1500 Monticello Avenue, Norfolk, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **March 18, 1997 - 4 p.m.** -- Open Meeting
Department for the Visually Handicapped, 620 East Beverly Street, Staunton, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **March 19, 1997 - 5:30 p.m.** -- Open Meeting
Lions Sight Foundation, 501 Elm Avenue, S.W., Roanoke, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **March 25, 1997 - 5 p.m.** -- Open Meeting
Virginia Rehabilitation Center for the Blind, 401 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

† **April 1, 1997 - 1 p.m.** -- Open Meeting
Department for the Visually Handicapped, 111 Commonwealth Avenue, Bristol, Virginia. ☎ (Interpreter for the deaf provided upon request)

A meeting to receive comments from the public regarding vocational rehabilitation services for persons with visual disabilities. All comments will be considered in developing the state plan for this program.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

Vocational Rehabilitation Advisory Council

March 1, 1997 - 10 a.m. -- Open Meeting
Department for the Visually Handicapped, Administrative Headquarters, 397 Azalea Avenue, Richmond, Virginia. ☎ (Interpreter for the deaf provided upon request)

The council meets quarterly to advise the Department for the Visually Handicapped on matters related to vocational rehabilitation services for blind and visually impaired citizens of the Commonwealth.

Contact: James G. Taylor, Vocational Rehabilitation Program Director, Department for the Visually Handicapped, 397 Azalea Ave., Richmond, VA 23227, telephone (804) 371-3140, toll-free 1-800-622-2155, or (804) 371-3140/TDD ☎

VIRGINIA WASTE MANAGEMENT BOARD

† **March 19, 1997 - 10 a.m.** -- Public Hearing
The Library of Virginia, 800 East Broad Street, First Floor, Lecture Hall, Richmond, Virginia.

† **March 20, 1997 - 1:30 p.m.** -- Public Hearing
Roanoke County Administration Center, 5204 Bernard Drive, Board Meeting Room, Roanoke, Virginia.

† **April 18, 1997** -- Public comments may be submitted until 5 p.m. on this date to the address listed below or by hand delivery to 629 East Main Street, Richmond, VA.

Notice is hereby given in accordance with § 9-6.14:7.1 of the Code of Virginia that the Virginia Waste Management Board intends to adopt regulations entitled: **9 VAC 20-160-10 et seq. Voluntary Remediation Regulations.** The purpose of the proposed regulation is to govern voluntary remediation of releases of hazardous substance, hazardous waste, solid waste, or petroleum.

Statutory Authority: § 10.1-1429.1 of the Code of Virginia.

Contact: Robert G. Wickline, P.E., Office of Technical Assistance, Waste Division, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone (804) 698-4213, FAX (804) 698-4327, toll-free 1-800-592-5482, or (804) 698-4021/TDD ☎

STATE WATER CONTROL BOARD

† **February 25, 1997 - 7 p.m.** -- Open Meeting
Highland County Public Library, Monterey, Virginia.

A meeting to receive comments from the public on the proposed reissuance of the existing discharge permit for the Monterey Sewage Treatment Plan, with the inclusion of new requirements for ammonia limits, a four-year schedule for compliance and a one-time testing requirement for 69 water quality standards.

Contact: Kemper Loyd, Department of Environmental Quality, Regional Office, P.O. Box 1129, Harrisonburg, VA 22801, telephone (540) 574-7800.

† **March 17, 1997 - 7 p.m.** -- Open Meeting
Woodlawn Intermediate School, Hillsville, Virginia.

A meeting to receive comments from the public on the proposed issuance of a Virginia Pollutant Discharge Elimination System Permit for the Crooked Creek Wastewater Treatment Plant.

Contact: Clairise S. Cartier, Department of Environmental Quality, Southwest Regional Office, 355 Deadmore St., Abingdon, VA, telephone (540) 676-4800.

† **March 18, 1997 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, Southwest Regional Office, 355 Deadmore Street, Abingdon, Virginia.

† **March 19, 1997 - 11 a.m.** -- Public Hearing
Department of Environmental Quality, Valley Regional Office,
4411 Early Road, Harrisonburg, Virginia.

† **March 20, 1997 - 2 p.m.** -- Public Hearing
Department of Environmental Quality, Piedmont Regional
Office, 4949-A Cox Road, Glen Allen, Virginia.

† **April 18, 1997** - 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: **9 VAC 25-194-10
et seq. General Virginia Pollutant Discharge
Elimination System (VPDES) Permit for Car Wash
Facilities.** The purpose of the proposed regulation is to
establish a general permit to cover the car wash facility
category of point source discharges to surface waters.

Request for Comments: The board is giving notice on the
proposed adoption of 9 VAC 25-194-10 et seq. and the
issuance of the General VPDES Permit (VAG75) to discharge
to state waters and state certification under the State Water
Control Law. The board is seeking written comments from
interested persons on both the proposed regulatory action
and the draft permit, and also comments regarding the cost
and benefits of the stated alternative or any other
alternatives. 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 within this period
will be considered by the board.

Other Information: The Department of Environmental has
conducted analyses on the proposed regulation related to the
basis, purpose, substance, issues and estimated impacts.
These are available upon request from Mr. Cosby at the
address below.

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
George Cosby. Persons needing interpreter services for the
deaf should notify Mr. Cosby no later than March 7, 1997.

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

Contact: George Cosby, Department of Environmental
Quality, P.O. Box 10009, Richmond, VA 23240, telephone
(804) 698-4067.

Technical Advisory Committee

March 4, 1997 - 9 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 the reissuance of the board's
general permit regulation governing discharges from the

cleanup of petroleum from underground storage tanks (9
VAC 25-120-10 et seq.).

Contact: Richard Ayers, Technical Services Administrator,
Department of Environmental Quality, 629 E. Main St.,
Richmond, VA 23219, telephone (804) 698-4075 or FAX
(804) 698-4032.

INDEPENDENT

STATE LOTTERY BOARD

† **February 26, 1997 - 9:30 a.m.** -- Open Meeting
State Lottery Department, 900 East Main Street, Richmond,
Virginia. (Interpreter for the deaf provided upon request)

A regular meeting of the board. Public comment will be
received at the beginning of the meeting.

Contact: Barbara L. Robertson, Legislative, Regulatory and
Board Administrator, State Lottery Department, 900 E. Main
St., Richmond, VA 23219, telephone (804) 692-7774 or FAX
(804) 692-7775.

LEGISLATIVE

Notice to Subscribers

Legislative meetings held during the Session of the General
Assembly are exempted from publication in *The Virginia
Register of Regulations*. You may call Legislative Information
for information on standing committee meetings. The
number is (804) 786-6530.

CHRONOLOGICAL LIST

OPEN MEETINGS

February 17

Local Government, Commission on

February 18

Agriculture and Consumer Services, Department of
- Virginia Farmers' Market Board
Corrections, Board of
- Correctional Services Committee
† Innovative Technology Authority
Medical Assistance Services, Board of

February 19

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for
- Board for Land Surveyors
Conservation and Recreation, Department of
- Rappahannock Scenic River Advisory Board
Corrections, Board of
- Administration Committee
Fire Services Board
- Residential Sprinkler Committee

Calendar of Events

† Manufactured Housing Board, Virginia
Medical Assistance Services, Department of
- Pharmacy Advisory Committee
† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- Pilot Leadership Team
Milk Commission, State
† Nursing, Board of
† Real Estate Board
- Education Committee
Social Services, State Board of
Transportation Board, Commonwealth
Virginia Racing Commission

February 20

Agriculture and Consumer Services, Board of
- Virginia Cattle Industry Board
Alcoholic Beverage Control Board, Virginia
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Land Surveyors
Audiology and Speech Language Pathology, Board of
Contractors, Board for
Fire Services Board
- Fire/EMS Education and Training Committee
- Fire Prevention and Control Committee
- Legislative/Liaison Committee
Mines, Minerals and Energy
- Division of Mined Land Reclamation
† Nursing, Board of
† Pharmacy, Board of
Psychology, Board of
- Discipline Committee
Real Estate Board
- Education Committee
- Fair Housing Subcommittee
Social Services, State Board of
Transportation Board, Commonwealth
Treasury Board

February 21

† Architects, Professional Engineers, Land Surveyors
and Landscape Architects, Board for
- Board for Land Surveyors
Dentistry, Board of
Fire Services Board
General Services, Department of
- Design/Build Construction Management Review
Board
Housing and Community Development, Department of
- State Building Code Technical Review Board
Psychology, Board of
- Credentials Committee

February 24

Chesapeake Bay Local Assistance Department
- Regulatory Committee and Regulation Advisory
Committee
Funeral Directors and Embalmers, Board of

February 25

† Emergency Planning Committee, Local - Hanover
County
† Funeral Directors and Embalmers, Board of

† Housing Development Authority, Virginia
Marine Resources Commission
† Water Control Board, State

February 26

† Accountancy, Board of
† Lottery Board, State
† Nursing, Board of
- Nursing Practice Advisory Committee

February 27

† Agriculture and Consumer Services, Department of
- Virginia Sheep Industry Board
Architects, Professional Engineers, Land Surveyors and
Landscape Architects, Board for
- Board for Landscape Architects
Compensation Board
Education, Board of
Health, Department of
- Biosolids Use Information Committee
- Biosolids Use Regulations Advisory Committee
† Medicine, Board of
† Nursing, Board of
Nursing Home Administrators, Board of
Psychology, Board of
- Discipline Committee
† Richmond Hospital Authority
- Board of Commissioners

February 28

Dentistry, Board of
† Medicine, Board of

March 1

Visually Handicapped, Department for the
- Vocational Rehabilitation Advisory Council

March 3

Alcoholic Beverage Control Board, Virginia
Local Government, Commission on

March 4

† Contractors, Board for
- Tradesman Certification Committee
Hopewell Industrial Safety Council
† Management Team, State
† Museum of Fine Arts, Virginia
Water Control Board, State
- Technical Advisory Committee

March 5

† Agriculture and Consumer Services, Department of
- Virginia Marine Products Board
- Virginia Soybean Board
† Conservation and Recreation, Department of
- Chickahominy Scenic River Advisory Board

March 6

† Agriculture and Consumer Services, Department of
- Virginia Soybean Board
- Virginia Sweet Potato Board

March 7

† Mental Health, Mental Retardation and Substance
Abuse Services, Department of
- State Human Rights Committee

Calendar of Events

March 10

- Chesapeake Bay Local Assistance Department
 - Regulatory Committee and Regulation Advisory Committee
- † Funeral Directors and Embalmers, Board of
- † Real Estate Board

March 11

- Polygraph Examiners Advisory Board
- † Real Estate Board
- Resources Authority, Virginia

March 12

- † Emergency Planning Committee, Local - City of Alexandria
- † Labor and Industry, Department of
 - Migrant and Seasonal Farmworkers Board
- † Real Estate Board
- † Visually Handicapped, Department for the

March 13

- Child Day-Care Council
- † Mental Health, Mental Retardation and Substance Abuse Services, Department of
 - Pilot Leadership Team

March 15

- † Visually Handicapped, Department for the

March 17

- Alcoholic Beverage Control Board, Virginia
- Professional and Occupational Regulation, Board for
- † Water Control Board, State

March 18

- Contractors, Board for
- Maternal and Child Health Council
 - School Health Subcommittee
- Medical Assistance Services, Board of
- † Mental Health, Mental Retardation and Substance Abuse Services Board, State
- † Museum of Fine Arts, Virginia
 - Board of Trustees
- † Virginia Racing Commission
- † Visually Handicapped, Department for the

March 19

- † Mental Health, Mental Retardation and Substance Abuse Services Board, State
- † Visually Handicapped, Department for the

March 20

- Agriculture and Consumer Services, Department of
 - Virginia Dark-fired Tobacco Board
- † Labor and Industry, Department of
 - Virginia Apprenticeship Council
- † Museum of Fine Arts, Virginia
 - Board of Trustees

March 21

- † General Services, Department of
 - Design-Build/Construction Management Review Board

March 24

- † Conservation and Recreation, Department of

- Goose Creek Scenic River Advisory Board

March 25

- † Criminal Justice Services Board
 - Committee on Training
- Marine Resources Commission
- † Visually Handicapped, Department for the

March 26

- † George Mason University
 - Board of Visitors

March 27

- † Rehabilitative Services, Board of

March 31

- Alcoholic Beverage Control Board, Virginia

April 1

- † Visually Handicapped, Department for the

April 9

- † Agriculture and Consumer Services, Department of
 - Virginia Winegrowers Advisory Board

April 12

- † Visually Handicapped, Board for the

April 18

- † General Services, Department of
 - Design-Build/Construction Management Review Board

April 23

- Mines, Minerals and Energy, Department of
 - Coal Surface Mining Reclamation Fund Advisory Board

May 16

- † General Services, Department of
 - Design-Build/Construction Management Review Board

PUBLIC HEARINGS

February 17

- Local Government, Commission on

March 6

- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council

March 10

- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council

March 11

- Air Pollution Control Board, State

March 12

- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council

March 13

- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council

Calendar of Events

March 18

- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council
- † Water Control Board, State

March 19

- † Professional Counselors and Marriage and Family Therapists, Board of
- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council
- † Waste Management Board, Virginia
- † Water Control Board, State

March 20

- † Game and Inland Fisheries, Board of
- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council
- † Waste Management Board,
- † Water Control Board, State

March 24

- † Game and Inland Fisheries, Board of
- † Rehabilitative Services, Department of
 - State Rehabilitation Advisory Council